



Award Number 17316

Docket Number TD-17946

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Dispatchers Association that:

- (a) The Atlantic Coast Line Railroad Company (now Seaboard Coast Line Railroad Company) hereinafter "the Carrier", violated the then effective Agreement between the parties, Article 3(b) thereof in particular, by its failure to properly compensate Train Dispatcher D. Oelslager for service performed on February 23, 1967, one of Claimant Oelslager's assigned weekly rest days.
- (b) The Carrier shall not be required to compensate Claimant Oelslager at time and one-half rate for February 23, 1967, instead of at the pro rata rate of compensation period.

EMPLOYEES' STATEMENT OF FACTS: At the time here in question an Agreement was in effect between the Atlantic Coast Line Railroad Company (now part of the Seaboard Coast Line Railroad Company) and the Claimant Organization. A copy of that Agreement should be on file with this Board and by this reference the same is incorporated into and as a part of this Submission as though fully set out.

"NOTE: Pursuant to authority granted by the Interstate Commerce Commission, the former Seaboard Airline Railroad and the former Atlantic Coast Line Railroad were merged into and became the Seaboard Coast Line Railroad Company, effective on or about July 1, 1967. The schedule agreement negotiated by the parties and applicable to the merged Carrier, patterned after and in much the same terms as that applicable to the former Seaboard Air Line Railroad Company, is not involved in this dispute.)

For the Board's ready reference Article 3 of the Agreement applicable to the former Atlantic Coast Line Railroad Company and which was in effect at the time here involved is quoted in pertinent part:

"REST DAYS:

- (a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Effective July 1, 1967, the Seaboard Air Line Railroad Company and the Atlantic Coast Line Railroad Company merged and became designated as Seaboard Coast Line Railroad Company.

The claimant in this dispute is a former Atlantic Coast Line employee who was, on the date involved in the claim, subject to the agreement between the Atlantic Coast Line Railroad Company and its train dispatchers represented by the American Train Dispatchers' Association, dated September 1, 1949, as amended.

A pre-deposition conference was held in the office of Carrier's Division Counsel at Tampa, Florida, on Thursday, February 23, 1967, in connection with suit brought against Carrier as a result of highway crossing accident which occurred at Dover, Florida, on April 15, 1966. Train Dispatcher Oelslager, Tampa, Florida, and several other employees, were required to attend the pre-deposition conference. Mr. Oelslager attended the conference on his rest day and was paid a straight time day for attending the conference in office of Division Counsel.

Claim was presented in behalf of Mr. Oelslager for 8 hours at rate of time and one-half for service performed on his rest day on Thursday, February 23, 1967, attending this pre-deposition conference.

The Association based its claim in behalf of Mr. Oelslager on alleged violation of Article 3(b) of the Agreement effective September 1, 1949, which, for convenience is quoted below:

"Article 3

"Rest Days:

* * * * *

"(b) A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

* * * * *

There having been no violation of the Agreement, the claim for punitive payment to Train Dispatcher Oelslager on February 23, 1967, was at all times declined on all levels of appeal on the property.

OPINION OF BOARD: Claimant, a train dispatcher for Carrier, was sent the following directive on February 21, 1967, by Carrier's Chief Dispatcher:

"Please report to Attorney Reeves in Marine Bank Building 8:30 A.M. Thursday, February 23 for predisposition (sic) conference and attend depositions later in connection with crossing accident at Dover April 15, 1966."

The date of this conference and deposition taking fell upon one of Claimant's rest days. After having dutifully attended this conference for

Carrier, Claimant put in for eight (8) hours at time and one-half. Carrier, instead, allowed Claimant eight (8) hours of straight time. Employees contend that the Agreement supports Claimant's claim for time and one half. Carrier claims that time and one-half is not supported by the Agreement, alleging that attending a deposition taking was not the kind of "service" intended by the language of the Agreement. Nonetheless, Carrier allowed the eight (8) hours of straight time pay.

The pertinent sections of the Agreement are set forth below:

"ARTICLE III

"REST DAYS:

(a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week.

(b) A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

An extra train dispatcher who is required to work as train dispatcher in excess of five (5) consecutive days shall be paid one and one-half times the basic straight-time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

(c) The term 'Rest days' as used in this section means that for a regularly assigned train dispatcher seventy-two (72) hours, and for a relief train dispatcher (who performs five (5) consecutive days' service as train dispatcher) fifty-six (56) hours, shall elapse between the time he is required to report on the day preceding his rest days and the time he is required to report for duty on the day following his rest days. These definitions of the term 'Rest days' will not apply in case of transfers due to train dispatchers exercising seniority.

....."

Although it is true that the Agreement is not explicit as to time and one-half payment for services other than those normally consistent with one's regular duties, this Board feels that the required attendance of Claimant for Carrier's purposes at this conference on Claimant's rest day must be considered "service" in Carrier's employ and must therefore be compensated at the rate of time and one-half. This "service" rendered by Claimant was, or was considered by Carrier's actions, at least as vital as his regular service to Carrier.

However, this Board is loathe to sustain this award for a full eight (8) hours of time and one-half pay when the record is silent as to exactly how much of Claimant's rest day was usurped by this conference.

Consequently, we sustain the claim for time and one-half pay to be computed by the minute for the exact amount of time Claimant spent at the conference and deposition taking. However, we remand to the property the question of how much of Claimant's time was required in consonance with the above opinion.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in Opinion.

A W A R D

Claim sustained but remanded for finding of material fact.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.