Award Number 17757
Docket Number TD-18187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOO LINE RAILROAD COMPANY

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

(a) The Soo Line Railroad Company, (hereinafter "the Carrier"), violated the existing Agreement between the parties, Rule 2(a) and 2(b) thereof in particular, by its failure and refusal to properly compensate Train Dispatcher E. D. Elder for time consumed in excess of eight (8) hours each day on May 22, 23, 24, 25 and 26, 1967 while making familiarization trips over the road at direction of proper authority.

(b) Carrier shall now be required to compensate Claimant Elder in an amount equal to twenty-four (24) hours and fifteen (15) minutes' pay at punitive rate of train dispatcher, this being the aggregate amount of time in excess of eight (8) hours per day consumed in the performance of the service described in paragraph (a) above.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, dated March 1, 1961, effective March 20, 1961, copy of which is on file with this Board, and the same is made a part hereof as though fully set forth herein.

For ready reference, applicable portions of said Agreement rules pertinent to this dispute are here quoted.

"RULE 2
HOURS OF SERVICE—OVERTIME

(a) Eight hours within a spread of nine hours shall constitute a day's work for assistant chief and night chief positions. Eight consecutive hours shall constitute a day's work for train dispatcher.

(b) Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis."

"RULE 19
LEARNING ROAD

A regular assigned train dispatcher will be paid one day at the daily rate of his assigned position for each day consumed in making

OPINION OF BOARD: Claimant, at Carrier's direction spent in excess of 8 hours on 5 separate calendar days engaged in familiarizing himself with the road. Claimant makes claim for that excess time at the penalty rate. Carrier denies the claim in stating that the pertinent rules make 8 hours pay the proper compensation for all hours spent over 8 hours in that type of work. The pertinent rules are as follows:

"RULE 2

"HOURS OF SERVICE—OVERTIME

"(a) Eight hours within a spread of nine hours shall constitute a day's work for assistant chief and night chief positions. Eight consecutive hours shall constitute a day's work for train dispatcher.

"(b) Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.

RULE 19
LEARNING ROAD

A regular assigned train dispatcher will be paid one day at the daily rate of his assigned position for each day consumed in making trips at the direction of the Superintendent to familiarize himself with the physical characteristics of the road; and extra train dispatcher will be paid on the same basis at trick dispatcher's rate. Actual necessary expenses for meals and lodging away from headquarters will also be allowed."

It is agreed that the ultimate issue is the meaning of the term "each day" as it appears in Rule 19. Claimant contends it means 8 hours while Carrier contends it means 24 hours.

Carrier cites a number of cases for its proposition which involve rest day problems, none of which involve the Rules in the subject Agreement. Carrier cites Award 687 (Spencer) which holds that the meaning of the word "day" must be determined in view of the circumstances of the particular situation. We agree.

Carrier urges that if we give the terms "each day", as it appears in Rule 19, a meaning of 8 hours and require time and one-half rate of pay for all time over 8 hours then this is nothing more than a reiteration of Rule 2 (a) and (b) and is therefore meaningless.

With this contention we cannot agree. Carrier says that the parties have never considered these trips "work" or "service" as contemplated under Rule 2. Obviously Organization does not agree. How better can the Organization secure compensation to the employees for these trips than to state in this Rule, which provides for the trips, that the employees shall get a day's pay for a day's work, just like any other "work" or "service" performed for the Carrier.

On this same point Carrier now argues that the employee is primarily serving himself by these familiarization trips and not the Carrier. Aside from the fact that it is very much in the Carrier's interest to have a knowledgeable, well informed and efficient work force, this is another reason

which may have given Organization cause to make it clear that this is compensable time.

It would be unwarranted to give the word "day" two different meanings (that is, 8 hours when it comes to pay and 24 hours when it comes to work), when it appears in the same sentence in the same Rule.

Carrier undoubtedly argues that if the first sentence in Rule 19 was to merely assure the compensability of this type of work then the parties would have said just that. Likewise if the parties had meant the term "each day" to mean "each calendar day" they would have said just that, which in fact was said by the parties when they drafted Rule 21 which deals with compensation for attending court.

Carrier urges us to find a past practice substantiating its theory but we find the only credible evidence to be Claimant's statement that he has been able to keep his hours spent performing this work below 8 hours per day prior to the week in dispute.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1970.

CARRIER MEMBERS' DISSENT TO AWARD 17757, DOCKET TD-18187

(Referee Ellis)

We respectfully submit that the Referee and Labor Members have committed error in adopting the Employes' interpretation of the language in the first sentence of Rule 19 reading:

> "A regular assigned train dispatcher will be paid one day at the daily rate of his assigned position for each day consumed in making trips . . ."

Contrary to what is said in the award, the foregoing provision does not say that a day's pay shall be allowed for a "day's work". The term "day's work" is defined in Rule 2 of the agreement, and had the parties intended

to allow a dispatcher one day at the daily rate of his assigned position for a "day's work" they would have used that terminology instead of providing that one day at the daily rate shall be allowed "for each day consumed in making trips".

Carrier's position regarding the meaning of the language quoted from Rule 19 is entirely sound and is clearly stated in Carrier's submission as follows:

> "Rule 19, Learning Road, was first incorporated in the Dispatchers' rules and working conditions agreement in the May 1, 1943 revision. This rule was readopted without change in the current revision of March 20, 1961. This rule merely affirmed what had been Company policy for many years. Under both prior policy and the formal rule of May 1, 1943, dispatchers required to make a trip over their territory have been allowed a day's pay—8 hours—regardless of whether or not each day's trip took more or less than 8 hours' time. This application of the rule has consistently been followed without challenge until Mr. Elder's claim. While Carrier does not consider the language of the rule to be in any way ambiguous, it may be well to point out that even were there any ambiguity in the rule, the fact that it has since its inception been consistently applied in the same manner for 25 years effectively establishes its intent and meaning."

We believe that a fair reading of the record compels the conclusion that the existence of the practice alleged by Carrier was not challenged by the Employes at any time during handling on the property and was tacitly admitted by them in their rebuttal where they merely alleged it was not a practice for individuals to spend 14 or 15 hours or more per day on such trips and asserted that Claimant's schedule was the most rigorous that had come to their attention. This past practice should have been accepted as a controlling indication of the proper method of payment under Rule 19, which specifically covers the situation and is controlling under the principle that special rules take precedence over general rules. On that basis, the claim should have been denied.

/s/ G. L. NAYLOR

/s/ G. C. WHITE

/s/ R. E. BLACK

/s/ P. C. CARTER

/s/ W. B. JONES

LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 17757, DOCKET TD-18187

Award 17757 correctly holds what compensation is due an employe in accordance with the Agreement rules. To hold otherwise would condone a Carrier usurping any amount of the employe's time for free.

There is no proof in the record of past practice, merely an assertion by the Carrier, as quoted by the minority in the dissent, for a self-serving purpose.

/s/ GEORGE P. KASAMIS
G. P. Kasamis, Labor Member

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.