

Award No. 18418

Docket No. TD-18767

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article II thereof in particular, by its failure and declination to compensate Train Dispatcher L. H. Bauer at time and one-half rate for service performed on April 29, 1969.

(b) Carrier shall now additionally compensate Claimant Bauer for the difference between pro rata rate and time and one-half rate applicable to Chief Dispatcher position for service performed on April 29, 1969.

EMPLOYEES' STATEMENT OF FACTS: The existing Agreement between the parties is incorporated herein by this reference.

For the Board's ready reference Article II of said Agreement is here quoted in full:

"ARTICLE II.

HOURS OF SERVICE

(a) Basic Work Day

Eight (8) consecutive hours shall constitute a day's work for train dispatchers.

(b) Overtime

1. 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.

2. The term 'time required to make transfer', as used in paragraph 1 of this section, includes the time it is necessary for the train dispatcher who is being relieved, to turn over to the relieving

CLAIM 4

The Claimant in this dispute (and succeeding Claim 5) is the regular incumbent of Relief Assignment No. 8 and, as such, he performs rest day relief work each week as follows:

Position	Assigned Hours	Work Week
No. 30 - Trick Train Dispatcher	7:30AM- 3:30PM	Sat&Sun
No. 31 - Trick Train Dispatcher	3:30PM-11:30PM	Mon&Tues
No. 32 - Trick Train Dispatcher	11:30PM- 7:30AM	Wednesday
	Rest Days	Thurs&Fri

Beginning Saturday, April 12, 1969, the Claimant fulfilled his regular relief assignment for four consecutive days.

In this dispute the Claimant requested and was granted permission to fill a two-day vacancy Thursday and Friday, April 17 and 18, 1969 on Excepted Chief Dispatcher Position No. 4, but in order for the Claimant to make himself available for relief service on Excepted Chief Dispatcher Position No. 4 Thursday, April 17, it was necessary for him to absent himself from his regular relief assignment on Wednesday, April 16, 1969, and in so doing he did not perform relief service commencing 11:30 P.M. that day on Trick Train Dispatcher Position No. 32.

The General Chairman presented on behalf of Claimant monetary claim for overtime rate less straight time rate allowed predicated upon the theory that the service rendered by the Claimant on Excepted Chief Dispatcher Position No. 4 on Thursday, April 17, 1969 was one of the assigned rest days of his regular relief assignment No. 8 and compensable at the overtime rate.

CLAIM 5

This dispute involves the same Claimant as in Claim 4, and the only factual difference between the two claims is that this dispute involves claim for overtime rate on the second rather than the first rest day of his regular relief assignment No. 8.

OPINION OF BOARD: Claimant was the regular incumbent of regular relief assignment No. 2. On Tuesday, April 28, 1969 he performed his regular relief assignment of protecting Night Chief Dispatcher Position No. 5, hours 3:30 P. M. to 11:30 P. M. On the next day, Tuesday, April 29, Claimant worked Excepted Chief Dispatcher Position No. 4, while the regular incumbent of said position No. 4 was on vacation. Claimant was paid for said date at the pro-rata rate of the position.

Claimant submitted this claim for overtime rate of pay on said date of April 29, 1969 on the basis of working 16 hours in a 24-hour period and thus alleging he is entitled to said overtime rate of pay under the provisions of Article II(a) and (b) of the Agreement.

Article II — "Hours of Service", provides as follows:

"(a) Basic Work Day

Eight (8) consecutive hours shall constitute a day's work for train dispatchers.

(b) Overtime

1. 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."

Claimant further relies on a letter, dated February 20, 1952 from Carrier's C. P. King, Director of Personnel, to General Chairman W. V. Claybourn, settling a claim similar to the dispute herein, wherein Mr. King stated in part:

"It was understood that your particular claim would be allowed and that in future similar factual situations when a train dispatcher is used to relieve the Excepted Chief Dispatcher on other than the latter's rest day, he will be compensated at one and one-half times the pro-rata daily rate of the Excepted Chief Dispatcher position for the second tour of duty within a 24 hour period or for work performed on the rest day or days assigned to his position. . . ."

Claimant's position is that (1) the exception as to Chief Dispatchers applies only to the appointed incumbent of the position and not to the position itself, and that employees performing relief service thereon are at all times subject to all of the rules of the collective bargaining agreement under which they work; (2) that while the incumbent of the position is excepted, the work of performing relief service on the position during temporary absences of the appointed incumbent is not excepted, but is contracted to the Claimant Organization.

Carrier relies on a letter of understanding between the parties herein, dated November 19, 1952, claiming as the quid pro quo for the five day work week granted to Excepted Chief Dispatchers, that on days the Excepted Chief Dispatcher is relieved by a train dispatcher, then he assumes the work and working conditions of the Chief Dispatchers including his hours of service.

The pertinent provisions of said Letters of Understanding of November 19, 1952 reads:

"1. * * * * *

2. On the days Train Dispatcher is relieving excepted Chief Dispatcher, it is understood Train Dispatcher takes the responsibility for proper performance of Chief Dispatcher's work, and that his working conditions, including hours of service, will be the same as apply to Chief Dispatcher."

Carrier, in its rebuttal submission to this Board alleges that the letter of February 20, 1952 from Carrier's Director of Personnel, C. P. King, to General Chairman, W. V. Claybourn, was never placed in issue or relied upon

in the handling on the property; and that new issues may not be raised for the first time on appeal to this Board, and requests that said exhibit be stricken from the record.

The record is void of any correspondence showing what issues or contentions were actually raised on the property. Inasmuch as said letter of February 20, 1952, marked "Exhibit TD-1" is crucial to the determination of the dispute, we must remand the dispute to the property for further proof as to whether or not said "Exhibit TD-1" was actually discussed and raised on the property.

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.

AWARD

Claim remanded to the property in accord with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1971.