

Award No. 18428
Docket No. TD-18765

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, 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 III (a) thereof in particular, by its failure and declination to compensate Train Dispatcher J. O. Atkins at time and one-half for service performed on April 29, 1969.

(b) Carrier shall now additionally compensate Claimant Atkins for the difference between pro rata rate and time and one-half rate applicable to Position No. 5 for rest day service performed on April 29, 1969.

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

For the Board's ready reference Article III (a) of said Agreement is here quoted in full:

"ARTICLE III
Rest Days, Vacation and Relief Service

(a) Rest Days

1. Each regularly assigned train dispatcher will be entitled and required to take two 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 days per week. Any 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.

2. Extra train dispatchers who are required to work as a train dispatcher in excess of five consecutive days shall be paid one and

appealed the decision to Mr. T. P. Deaton, Carrier's Director of Labor Relations.

On September 25, 1969 the Director of Labor Relations denied the claim stating in part:

"The claim for overtime rate is based upon the allegation that the claimant rendered service on the rest days of the assignment he had been temporarily filling. Investigation discloses, however, that the claimant did not perform service on more than five days in either of his work weeks beginning Monday, April 21 and Monday, April 28, 1969. The alleged violation of Article III (a) and Article IV (k) is denied."

Conference was held October 22, 1969 at which time the Director of Labor Relations reaffirmed his denial of September 25, 1969.

By letter dated November 13, 1969, the General Chairman advised the director of Labor Relations that his decision was not acceptable and that he was referring the matter to the President of the Claimant Organization for further handling.

This dispute having been handled in the usual manner up to and including Carrier's highest designated officer and having been declined by him, the claim is properly before this Board for adjudication.

All facts, data, and contentions herein set out have been the subject of conference and/or correspondence between the parties, or are known and available to the Carrier.

CARRIER'S STATEMENTS OF FACTS:

CLAIM NO. 1

At the time of the occurrence the Claimant was a guaranteed assigned dispatcher and, as such, subject to the Agreement between the parties attached hereto as Carrier's Exhibit "A." In accordance with paragraph (2) of Carrier's Exhibit "A" guaranteed assigned dispatchers are paid under the applicable Agreement provisions, with a minimum of five days for each work week, Monday through Sunday, in which fully available, and rest days (which are unassigned) need not be consecutive.

Beginning Monday, April 21, 1969 the Claimant was used to relieve the regular incumbent of Night Chief Dispatcher Position No. 2 assigned 3:00 P.M. - 11:00 P.M. Thursday through Monday with Tuesday and Wednesday rest days. The Claimant did not perform compensated service on Tuesday and Wednesday, April 22 and 23 or on the rest days of Night Chief Dispatcher Position No. 2.

The Claimant continued to perform relief service on Night Chief Dispatcher Position No. 2 for five consecutive days, Thursday, April 24 to and including Monday, April 28, 1969.

The Claimant relieved the regular incumbent of regular relief assignment No. 2 on Tuesday and Wednesday, April 29 and 30, and in so doing provided rest day relief on Night Chief Dispatcher Position No. 5, 3:30 P.M. - 11:30