Award No. 18431
Docket No. TD-18766

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 (b) 3 thereof in particular, by its failure and declination to compensation Train Dispatcher D. L. Ables three (3) hours for service performed prior to his regular starting time on July 4, 1969.

(b) Carrier shall now additionally compensate Claimant Ables for the difference between one and one-half hours and three (3) hours for service performed prior to his regualr starting time on July 4, 1969.

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

For the Board's ready reference Article II (b) 3 of said Agreement is here quoted in full:

"3. Train dispatchers notified or called to perform work not continuous with regular assigned hours amounting to less than eight hours shall be paid on the basis of three hours for two hours' work or less, and if held on duty in excess of two hours time and one-half will be allowed on the minute basis."

This dispute had its inception on July 4, 1969 when Claimant was required to report for duty at 10:30 P. M., one hour ahead of his regular starting time. Claimant Ables was due to protect Position No. 25, 11:30 P. M., July 4, 1969 and due to the illness of incumbent of position working 3:30 P. M., July 4, 1969 Claimant performed nine (9) hours' service.

Timely claim for compensation in accordance with Article II (b) 3 for a three (3) hour call was made. Claim was denied by the Superintendent of Transportation, F. E. Wait, under date of July 22, 1969 in the following language:

"Records indicate that Mr. Ables was lined up to protect Position No. 25, 11:30 P. M., July 4, and account Dispatcher C. E. Roberts

The Claimant was allowed one hour at overtime rate for reporting one hour in advance of the regular starting time of the assignment on which he was to perform relief service. The claim is that the employe should have been compensated for such service under the Call Rule (three hours for two hours' work or less).

OPINION OF BOARD: Due to illness of the incumbent of position No. 25 working from 3:30 P. M. to 11:30 P. M. July 4, 1969, Claimant reported for duty at 10:30 P. M., one hour ahead of starting time. The Organization bases this Claim on Article II (b) 2 and 3 of the Agreement which is essentially the same as Article II (7) of the Telegraphers Agreement (Call Rule), and which requires a payment of 3 hour minimum under the principle set out in Award 17184. Carrier contends that Claimant should be paid at the rate of time and one-half (overtime) under the provision of Article II (b) 1; that Article II (b) 3 does not apply because the work of Claimant involved in this dispute was "continuous" with his regularly assigned hours.

The Organization cites Award No. 17184 (Criswell) for authority; Carrier cites Award No. 14405 (Hall). This referee has carefully examined both Awards, together with Docket No. TE-16364 on which Award No. 17184 is based. After carefully examining the various submissions and precedent awards, this Board comes to the conclusion that the holding in Award No. 14405 is controlling in this dispute. It is noted that Award 17184, cited by the Organization, states in part:

> "In Award 14405, when the Board denied a claim similar to the one now before us, there were circumstances which we do not face, and we, therefore, do not feel bound to follow that decision."

All of the awards cited by the Organization are awards involving the Telegraphers craft. The Telegraphers' Agreement contains a different overtime rule than that applied in the instant case, and limits the provisions of the Agreement to continuous hours after regularly assigned hours. (Emphasis ours.) The Overime Rule in the instant case contemplates work outside of regularly assigned hours, both before and after. The Overtime and Call Rules coincide with such rules as contained in Award 14405, therefore rendering said Award 14405 controlling in this case.

Also, it is the opinion of this Board that since there was no break between Claimant's service between his early call work period and his regularly assigned hours, the service herein was "continuous." It is the opinion of this Board that "continuous" means the absence of an interval between work assignments.

For the above stated reasons, this claim will be denied.

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 disptue 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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago Illinois, this 12th day of March 1971.

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