

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19961
Docket Number TD-19983

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Burlington Northern Inc.

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

CLAIM #1

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Articles 2(e) and 2(d) thereof in particular, when it refused to properly compensate train dispatcher B. D. Bidwell for June 27, 28, 29, 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, 1970, respectively when called and required to perform service on positions outside the hours of his regular assignment in Carrier's Missoula, Montana train dispatching office.

(b) For the above violation, the Carrier shall now compensate Claimant B. D. Bidwell eight (8) hours at the punitive rate of pay then applicable to assistant chief dispatchers for the respective dates named in paragraph (a) above.

CLAIM #2

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Articles 2(e) and 2(d) thereof in particular, when it refused to properly compensate Claimant train dispatcher W. H. Dzuck for January 1, 1971 when called and required to perform service on a position outside the hours of his regular assignment in Carrier's Minneapolis, Minnesota train dispatching office.

(b) For the above violation, the Carrier shall now compensate Claimant W. H. Dzuck eight (8) hours at the punitive rate of pay then applicable to assistant chief dispatchers for January 1, 1971.

CLAIM #3

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Articles 2(e) and 2(d) thereof in particular, when it refused to properly compensate Claimant train dispatcher J. E. Roten for February 19, 20, 21, 22, 23, 26 and 27, 1971, respectively, when called and required to perform service on positions outside the hours of his regular assignment in Carrier's Alliance, Nebraska train dispatching office.

(b) For the above violation, the Carrier shall now compensate Claimant J. E. Roten eight (8) hours at the punitive rate of pay then applicable to assistant chief dispatchers for the respective dates named in paragraph (a) above.

OPINION OF BOARD: The Claimants in this case, all trick Train Dispatchers, were assigned to other tricks than their normal hours as Assistant Chief Dispatchers. The sole issue in this case is whether a regularly assigned trick Train Dispatcher used as an Assistant Chief Dispatcher on another trick should be compensated at the overtime rate.

The relevant Rules are as follows:

"ARTICLE 2

(d) CALLS.

Except as provided in Article 2, Section (b), and Article 3, Section (b), a regularly assigned train dispatcher called to perform service, and reporting, outside the hours of his regular assignment shall be paid actual time for such service, with a minimum of two (2) hours, at rate of time and one-half of the position for which he is called.

An extra train dispatcher called to perform train dispatching service, and reporting, shall be paid a minimum of one (1) day's pay at the rate of the position for which called.

(e) SERVICE ON POSITIONS OTHER THAN SENIORITY CHOICE.

An assigned train dispatcher required to work a position other than the one he obtained in the exercise of his seniority, except an assigned train dispatcher who is used on the position of chief dispatcher, or assistant chief dispatcher, shall be compensated therefor at the overtime rate of the position worked; however, except as provided in Article 18, no additional payment shall be made to such train dispatcher due to not having worked his regular assignment.

Assistant chief dispatcher, required by the management to work a shift as trick dispatcher, will be compensated at the rate of his assigned position.

Assistant chief dispatcher, required by the management to work as a chief dispatcher, will be compensated at the rate of chief dispatcher.

Petitioner argues that the only logical interpretation of Article 2 (e), in view of 2 (d), is that the exception applies only to situations where no change of hours is involved. Petitioner also argues, and we agree, that the Agreement, and particularly Article 2, must be viewed as a whole. A further contention of the Organization is that Carrier's interpretation of Article 2 does violence to the principal of seniority in that a senior employee holding a preferred assignment by choice, may be required to perform service on other positions on less desirable shifts without added compensation. A further assertion of Petitioner is that if the overtime provisions did not apply when train dispatchers perform service on a position of chief dispatcher or assistant chief dispatcher, an exception to that effect would appear in Article 2 (d).

Our study and evaluation of the language of Article 2 does not agree with Petitioner, who's entire argument is based on construing this clause of the Agreement. Article 2 (d), "Calls," deals with the compensation of employees in their regularly assigned positions for work outside of their regular hours, usually in addition to their regular work hours. The meaning of a "Call" provision such as this is generally construed in this manner throughout the industry.

Section 2 (e) qualifies the application of seniority; its title "Service on Positions other than Seniority Choice" indicates the intent of the provision. It has no relationship to 2(d) and is clear and totally unambiguous, including the exception. We can appreciate the Organization's concern with the effect of the provision, but as the parties know full well this Board is not empowered to rewrite the Rules. Changing the impact of Article 2 (e) is a problem for the bargaining table, not the Board. The claims must 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 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 not violated.

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Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.