

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20138
Docket Number TD-20071

Irving T. Bergman, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(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 referred to as "the Carrier"), violated the effective Agreement between the parties, Article III(a) 1 thereof in particular, when it failed and refused to compensate Claimant Train Dispatcher P. E. Paulsell at time and one-half the daily rate applicable to Chief Dispatchers for service performed on Position No. 1, December 9, 1971.

(b) Because of said violation, Carrier shall now be required to compensate Claimant P. E. Paulsell the difference between one (1) day's compensation at the pro-rata daily rate and time and one-half the daily rate applicable to Chief Dispatchers for December 9, 1971.

OPINION OF BOARD: This claim is made by a regularly assigned relief position train dispatcher for time and one-half compensation when relieving the excepted Chief Dispatcher on the claimant's rest day.

In this case, the claimant was regularly assigned to relieve the Chief Dispatcher in the No. 1 position on Saturdays and Sundays, on Mondays and Tuesdays he relieved the Night Chief Dispatcher on No. 2 position, and on Wednesdays he relieved the Night Chief Dispatcher on the third trick. His rest days were Thursday and Friday. The Chief Dispatcher's position was to be vacant on Tuesday, Wednesday and Thursday. Claimant requested to protect the vacancy and laid off on Monday in order to be available for the No. 1 position on Tuesday. He was paid the pro rata rate of the Chief Dispatcher for Tuesday, Wednesday and Thursday. Because Thursday was claimant's regularly assigned rest day, the Organization requested time and one-half pay under Article III(a)1., of the Agreement.

In addition to Article III, the Organization also relies upon a letter dated February 20, 1952 from a former Director of Personnel for the Carrier addressed to a former General Chairman in settlement of a claim involving relief of an excepted Chief Dispatcher which stated the following: "--, 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 time 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."

The Organization also has argued that the claimant could not offer and the Carrier could not accept an offer to waive the extra compensation. Such an agreement would then be an individual contract in violation of the Agreement and of labor relations concepts as decided by the Courts and prior Awards.

The position of the Carrier, in the main, is that the position of Chief Dispatcher is excepted from the Agreement. Consequently, anyone working in that position is excepted from the Agreement. If so, then claimant is not entitled to the extra compensation for working on his regular rest day. To support this contention, the Carrier has referred to a letter agreement dated November 19, 1952 which states in paragraph 2, the following: "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."

In addition, the Carrier argues that claimant chose to work the assignment on his day off so that he is barred from making the claim as decided in Third Division Award 18541.

Reference has been made to PLB No. 300, Case No. 4 and No. 27 between the same parties as in this case. In No. 4 it was held that the relief train dispatcher who temporarily filled in for the chief dispatcher was not entitled to the overtime rate for working continuously beyond the assigned hours. In No. 27 it was held that the regularly assigned night chief dispatcher who left his regular assignment temporarily to work on his rest days as chief dispatcher was entitled to the time and one-half rate. The apparent inconsistency is explained in the Awards. In No. 4, the claim was denied because the letter agreement of November 19, 1952 specifically provided that the relief would take the working conditions of the chief dispatcher, including hours of service. In No. 27, it was found that the letter agreement of November 19, 1952 did not apply. An additional reason for sustaining the claim was stated in the Award to be a settlement reached on September 22, 1951. The pertinent part of that settlement stated: "--, 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 --." It is noted that this is the same statement as that set forth in the Personnel Director's letter of February 20, 1952.

In Awards 19845 and 19866, claims were sustained for dispatchers who worked on their assigned rest days as chief dispatcher. They were awarded time and one-half pay. These Awards involved a different carrier. The Agreement in those cases excluded the chief dispatcher as in this case. There was no letter agreement such as that relied on by the Carrier in this case. However, the relief dispatcher was held to have a vested right to time and one-half pay for working on his assigned rest day after completing five days work of his regular assignment. Award 20017 sustained the same claim on the same grounds in a case involving a different carrier.

The Carrier in this case not only argues that the Agreement between these parties is different but also has argued that the train dispatcher in this case, volunteered to accept the working conditions of the chief dispatcher when he offered to work the vacancy. In so doing, the Carrier contends that he waived his right to the extra compensation provided in Article III (a) 1. Award 9852 of this Division denied a claim to a conductor who chose to work a different assignment. Award 14076 denied the overtime claim of a dispatcher who worked temporarily as chief dispatcher. The Agreement in that case, p. 12 of the Award, provided an exception to the overtime rule when relieving the excepted chief dispatcher. The language of the exception was similar to the language upon which PLB No. 300, Case No. 4, discussed above, was decided. Award 17791 denied a claim for time and one-half when a towerman volunteered to give up a vacation day to work. Award 17928 denied a claim for a days pay for being held off from work.

Confining the discussion to the circumstances of this case, we find that the term "working conditions" set forth in the letter of November 19, 1952 does not necessarily include compensation. The 1952 letter specifically refers to "hours of service" leaving working conditions as a general term. Award 18541 relied upon by the Carrier chose to ignore the letter of February 20, 1952 and interpreted "working conditions" in the November 19, 1952 letter agreement to include compensation. The same Award adopted the reasoning of Case No. 4 of PLB No. 300. Case No. 27 of the same Board between the same parties did not interpret "working conditions" in the November 19, 1952 letter agreement to exclude time and one-half pay for relieving on an assigned rest day in the position of excepted chief dispatcher. Award 18541 is dated April 29, 1971 whereas Case No. 27 is a later Award dated August 9, 1971. Case No. 27 also includes the fact, as in this case, that, "the Carrier was not required in this instance to use the claimant, but having done so, is obligated to pay the overtime rate of time and one-half instead of the pro rata rate."

Upon all the facts recited above and review of the Awards, the scale in this case weighs in favor of the claimant.

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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 Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.