

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20930
Docket Number TD-20867

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Baltimore and Ohio Railroad Company

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

CLAIM #1

(a) The Baltimore & Ohio Railroad Company (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 3(b) thereof in particular, when it failed and refused to compensate Claimant regular assigned second trick chief dispatcher C. D. Moreland at time and one-half his trick chief dispatcher rate for Overtime services performed 7:59 a.m. to 3:59 p.m. on March 8 and April 5, 1971 respectively;

(b) Because of said violation, the Carrier shall now be required to compensate Claimant C. D. Moreland the difference between eight (8) hours' compensation at time and one-half the trick chief dispatcher rate and one (1) day's compensation at the excepted chief dispatcher pro rata rate for March 8 and April 5, 1971 respectively.

CLAIM #2

(a) The Baltimore & Ohio Railroad Company (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 3(b) thereof in particular, when it failed and refused to compensate Claimant regular assigned relief chief dispatcher H. A. Miller at time and one-half rate of trick chief dispatcher rate for Overtime service performed 7:59 a.m. to 3:59 p.m. on April 21, 1971;

(b) Because of said violation, the Carrier shall now be required to compensate Claimant H. A. Miller the difference between eight (8) hours' compensation at time and one-half the trick chief dispatcher rate and one (1) day's compensation at the excepted chief dispatcher pro rata rate for April 21, 1971.

CLAIM #3

(a) The Baltimore & Ohio Railroad Company (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 3(b) thereof in particular, when it failed and refused to compensate Claimant regular assigned second trick chief dispatcher C. D. Moreland at time and one-half his trick chief dispatcher rate for Overtime

service performed 7:59 a.m. to 3:59 p.m. on November 12, 1971;

(b) Because of said violation, the Carrier shall now be required to compensate Claimant C. D. Moreland the difference between eight (8) hours' compensation at time and one-half the trick chief dispatcher rate and one (1) day's compensation at the excepted chief dispatcher pro rata rate for November 12, 1971.

OPINION OF BOARD: Claimant Moreland was the regularly assigned second trick chief dispatcher in Grafton, West Virginia with assigned hours of 3:59 to 11:59 p.m. (Monday and Tuesday rest days). Moreland worked his regular shift on Sunday, March 7, 1971, but on Monday, March 8, 1971, he was utilized to relieve the first trick Dispatcher (an excepted position under the Agreement) between the hours of 7:59 a.m. and 3:59 p.m. Similarly, Moreland relieved on the same position of Monday April 5, 1971.

Claimant Miller was regularly assigned as Relief Chief Dispatcher at Grafton, West Virginia and worked as second trick Chief Dispatcher on April 20, 1971. Eight (8) hours later, he was utilized to fill a vacancy as first trick Chief Dispatcher (an excepted position under the Agreement).

On November 12, 1971, Claimant Moreland was utilized to fill a vacancy as first trick Chief Dispatcher (an excepted position under the Agreement) after he had worked his regular assignment on the previous day.

In each instance, Claimants were compensated at the pro rata rate of pay applicable to the excepted Chief Dispatcher; rather than the claimed punitive rate of pay applicable to the excepted Chief Dispatcher.

The Organization's claim to overtime compensation is grounded upon Article 3(b):

Time worked in excess of eight (8) hours on any day ... will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.

The first trick Chief Dispatcher at Grafton, West Virginia is excepted from the application of the Rules Agreement pursuant to Rule 1(a). However, Carrier's refusal to compensate at the punitive rate was not based on the contention that because the position in question was exempt - any employee filling the vacancy was likewise excepted. Rather, Carrier states that its refusal to pay was based upon certain language of the Rules Agreement, specifically Article 2(e):

Regularly assigned train dispatchers required by proper authority to work on other than their regular assignments will be paid at time and one-half their regular rate, such payment to represent compensation

for the work performed and in lieu of the regular assignment: provided, however, that train dispatchers temporarily used as chief dispatcher who are excepted from this agreement, will be paid the pro rata rate of the position filled. No claim will be made for pay for the regular assignment on days on which the incumbent performs service on other than his regular assignment but if he loses a day's pay in transferring to or from his assignment due to Hours of Service Law he will be paid therefor at pro rata rate. ***.

Thus, urges Carrier, while performing the excepted duties, Claimants were still controlled by the agreement - and were compensated therefor strictly in accordance with the specific rule of the agreement.

Our review of the facts and contentions of record suggests that the sole issue for resolution is whether Article 2(e) prevails over Article 3(b). In this regard, Carrier insists that because Article 2(e) is a "special rule" it must control.

Two (2) recent Awards by this Board are persuasive to us.

In Award 20017, the Board considered a rule which was similar to Rule 2(e) here under consideration. It stated an overtime entitlement:

"...except an assigned train dispatcher who is used on the position of Chief Dispatcher...."

Nonetheless, the Award sustained a claim for payment at the punitive rate. Although the Award speaks in terms of a qualified application of seniority, it noted that Carrier's interpretation would permit a regular requirement of five days of work as a Train Dispatcher and then two days relieving a Chief Train Dispatcher "... all at pro-rata pay". Such a result, according to Award 20017 is contrary to the agreement as well as the clear intent of national agreements on the five day week issue.

Award 20668 sustained a claim similar to the one here involved, citing Award 20017, and held that an Article, such as 2(e) does not serve to modify the clear provisions of a Rule which provides for the punitive rate for overtime service.

We will sustain the claim.

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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 Agreement was violated.

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 16th day of January 1976.