NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21100
THIRD DIVISION Docket Number TD-21101

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

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

(a) Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "the Carrier"), violated the provisions of the effective schedule Agreement between the parties, Article III, Sections 1, 2 and 3 thereof in particular, when on December 1, 1973 the Carrier used Claimant Unassigned Train Dispatcher R. E. Tiedeman on the first trick Assistant Chief Dispatcher position after having previously worked the second trick Assistant Chief Dispatcher position on November 30, 1973.

(b) Because of said violation, the Carrier shall now be required to compensate Claimant R. E. Tiedeman the difference between the pro rata and the time and one-half rate applicable to Assistant Chief Dispatchers for December 1, 1973.

OPINION OF BOARD: The Claimant, an unassigned or extra train dispatcher, worked in the Carrier's office at San Bernardino, California, from 3:00 P.M. to 11:00 P.M. on November 30 and from 6:00 A.M. to 2:00 P.M. the following day, December 1, 1973. The parties join issue on the Employe's contention that the Claimant had a work "day" comprised of a twenty-four hour period beginning at 3:00 P.M. on November 30 and that he therefore should have been paid time and one-half for his service in excess of eight hours on such work day, i.e., the eight hours on December 1. The Carrier paid straight time for each of the days.

The Employes rely primarily on Sections 1, 2, and 3 of Article III of the Agreement, which read as follows:

"ARTICLE III--HOURS OF SERVICE, OVERTIME AND CALLS

Basic Day

Section 1. Eight (8) consecutive hours shall constitute a day's work.

Overtime

Section 2. Time worked under this Agreement in excess of eight (8) hours, continuous with, before or

after, regular assigned hours will be considered overtime and paid for on the actual minute basis at the rate of time and one-half. Time required to make transfer shall not be considered as overtime or paid for under this section.

Calls

Section 3. A train dispatcher notified or called to perform work not continuous with his regular assigned hours shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours time and one-half will be allowed on the minute basis."

The Employes' basic contentions are (1) that Article III, Section 1, established the definition of a "day" as a twenty-four (24) hour period computed from the starting time of the previous assignment worked, and (2) that the Claimant in the instant facts, having worked eight hours from 3:00 P.M. to 11:00 P.M. on November 30, should have been compensated for the eight hours of service on December 1 at the time and one-half rate under Article III, Section 2. Sections 1 and 2, Article III, should thus be construed, according to the Employes, as requiring that an unassigned dispatcher who works in excess of eight (8) hours in a twenty-four (24) hour period (in excess of transfer time) is entitled to be paid for such excess service at the time and one-half rate. The Employes cite nine authorities in support of their first point and, with respect to their second point, the Employes' Reply Brief suggests that the text of Section 2 should be read as providing overtime for the second eight-hour tour within a twenty-four hour period whether such tour "'...be (1) continuous with, (2) before, (3) or after the regular assigned hours of the position in question ...'"

The nine cited authorities contain rulings or dicta to the effect that the term "day" means a "twenty-four hour period computed from the starting time of a previous assignment." Award No. 687, et al. However, the overtime rules considered by these authorities typically provided that "time in excess of eight (8) hours" will be paid at "the rate of time and one-half." In Award No. 687, for example, the rule at issue provided that "time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half." For a like example, see Award No. 5414. Neither this language nor similar language obtains in the rules involved in the instant dispute, for the herein overtime rule provides in Section 2 that time "...in excess of eight (8) hours, continuous with, before or after, regular assigned hours will be considered overtime." (Underline added). The vast difference between the rules in the cited authorities and the herein rules is obvious and thus the cited awards are not analogous to the instant claim. It is therefore concluded that neither the text of Section 1, nor the cited

Awards, support the Employes' definitional proposition concerning Section 1, Article III. Additionally, since there was a seven hour hiatus between the service on November 30 and the service on December 1, the service on December 1 does not meet the previously underlined "continuous with" requirement contained in Section 2. Finally, the construction of Section 2, as set out in the Employes' Reply Brief, is incompatible with the plain language of such Section. That construction calls for treating the term "continuous with" in such Section in a manner which renders irrelevant the seven hour hiatus between the herein Claimant's two periods of service; however, as used in Section 2, the term "continuous with" clearly and unambiguously precludes from the overtime provisions of Section 2 non-continuous service such as that involved in the herein dispute. Such non-continuous service is encompassed by Section 3, Article III, but the Employes do not contend that Section 3 supports the claim.

In view of the foregoing, and on the whole record, it is concluded that the cited rules and authorities do not support the claim. Accordingly, the 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 dispute 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.