

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21525
Docket Number TD-21162

Lloyd H. Bailer, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: (a) The Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as "the Carrier", violated the Agreement in effect between the parties on April 6, 1972, Article 3(b) thereof in particular, when it failed and refused to properly compensate Claimant Train Dispatcher Jack R. Lyons for service performed on an assigned weekly rest day.

(b) Carrier shall now be required to compensate Claimant in the amount of \$32.29, which represents the difference between the pro rata rate applicable to the service performed and the time and one-half rate applicable to service performed on a rest day.

OPINION OF BOARD: The facts are undisputed. The claimant, a regularly assigned train dispatcher, was required to perform service on one of the assigned rest days of his position--namely, April 6, 1972--in relief of a chief train dispatcher. For such service Claimant was paid \$65.58, which was the (updated) "flat rate...per day" specified in a separate agreement dated March 9, 1962 (effective April 1, 1962) between the parties. The claim is for the difference between this amount and time and one-half for service performed on his rest day, as provided by Article 3 of the Schedule Agreement. Carrier denies that the requested time and one-half is due claimant, on the ground that the rate he was paid for relieving a chief dispatcher is contained in a special rule which governs in this case. Article 1(a) of the Schedule Agreement states that the rules listed therein "shall govern the hours of service, compensation and working conditions of train dispatchers. The term 'train dispatchers' as used in this agreement shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office."

We are mindful of a long line of awards which state that both the so-called rest day rule and the separate rule governing payment for train dispatchers who relieve chief dispatchers apply when a train dispatcher relieves a chief dispatcher on a rest day of the train dispatcher. But none of these awards contained the language of the separate agreement which applies to this case. Here, the parties negotiated agreement language stating that "any employe who relieves the Chief Dispatcher for any reason shall be compensated at a flat rate of...per day. The rate of pay of the relief Chief Dispatcher shall be subject to any general adjustment, increase or decrease thereto, granted to dispatchers." (Underlining supplied.) The parties are

not presumed to have used the word "flat" without intending that it has meaning. The dictionary tells us that when used in the subject context "flat" means "absolute or fixed". Petitioner seeks to read the word "flat" out of this case but we may not do so.

Thus it is held that the clear and unambiguous language the parties have used forbids the payment of time and one-half under the subject circumstances.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

C. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.

