

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26215
Docket Number TD-26203

John E. Cloney, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Seaboard System Railroad

STATEMENT OF CLAIM:

"CLAIM #1 - CARRIER FILE 10-7(83-6) I3

Claim of C. E. Mattox under Article VII(d)(3) for time lost from regular assignment in other service on December 5-6 and December 10-11, 1982 to perform service as extra train dispatcher.

CLAIM #2 - CARRIER FILE 10-7(83-9) I3 and C2

Claim of G. W. Deason under Article VII(d)(3) for time lost from regular assignment in other service on December 11-12, and December 17-18, 1982 to perform service as extra train dispatcher.

CLAIM #3 - CARRIER FILE 10-7(83-24) C2

Claim of C. E. Mattox under Article VII(d)(3) for time lost from regular assignment in other service on January 29-30, 1983 to perform service as extra train dispatcher."

OPINION OF BOARD: These three Claims are for amounts allegedly due two separate Claimants who hold regular Clerk positions and who performed service as Extra Train Dispatchers. The dispute grows out of a difference as to the meaning of the following portions of Article VIII of the Agreement:

". . . .

(d) Loss of Time Changing Positions

(1)

(2)

(3) When extra train dispatchers are called from their regular assignments in other service to perform service as train dispatcher, they will be paid the rate of the position they fill in dispatcher service, but if the change from one service to the other requires them to lose time account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on their regular assignments in such other service.

Example: A telegrapher holding a regular assignment as such paying \$3.00 per hour is called to perform extra service as train dispatcher for one day, but thereby of a necessity loses two days from his regular telegrapher position. He earns, as dispatcher, \$33.00; his rate on his regular position from which he lost two days was \$24.00 per day. He will be paid \$48.00 instead of \$33.00. If any travel pay is earned under Article IV(h)(2) the amount earned will be applied toward making up the difference of \$33.00 and \$48.00."

The facts of the three Claims, though similar, are not identical.

In Claim Number 1 Mattox, a regular Crew Clerk, with hours of 11:00 P.M. - 7:00 A.M., rest days Tuesday and Wednesday, worked Extra Train Dispatcher service on Friday, December 3 and on Saturday, December 4 from 11:59 P.M. until 7:59 A.M. Due to the Hours of Service Law he was required to lose time from his regular assignment on Sunday, December 5 and Monday, December 6 in order to work 3:59 P.M. to 11:59 P.M. as a Train Dispatcher on December 6.

After the Train Dispatcher assignment on December 6 he observed his regular Tuesday and Wednesday rest days. He returned as Train Dispatcher on Thursday, December 9 from 11:59 P.M. to 7:59 A.M. He was again required to lose time from his regular assignment on Friday, December 10 and Saturday, December 11 to work as a Train Dispatcher on Saturday, December 11. On Sunday, December 12 and Monday, December 13 he again worked as a Train Dispatcher.

Claimant's rate of pay in his regular assignment was \$94.17 daily, while his daily rate as a Dispatcher was \$124.49.

The Organization argues Mattox lost time from his regular assignment on Sunday, December 5 and on Monday, December 6 in order to work the Train Dispatcher shift from 3:59 P.M. to 11:59 P.M. on December 6 and thus lost two days' pay totaling \$188.34 in order to earn one day's pay of \$124.49 and is therefore entitled to \$63.85 compensation. The same is true of December 10 and December 11, entitling him to another \$63.85 for a total of \$127.70. Carrier points out that during the period involved Mattox would have earned \$847.53 as a Clerk but earned \$871.43 as a Dispatcher and concludes nothing is due.

Claim Number 3 also involves Mattox. He worked his regular assignment on Thursday, January 27. On Friday, January 28 he worked as a Train Dispatcher from 3:59 P.M. to 11:59 P.M. He was then required to lose time from his regular assignment on Saturday, January 29 and Sunday, January 30 in order to work from 7:59 A.M. to 3:59 P.M. as a Train Dispatcher on Sunday, January 30. On Monday, January 31 he worked as Train Dispatcher. On February 1 and 2 (his rest days) he worked as a Train Dispatcher as well as on February 3, 4 and 5 returning to his regular assignment on February 6. Thus the Organization argues Mattox lost time on January 29 and 30 in order to work as a Train Dispatcher on January 30 for which he received \$128.10. As his daily rate was \$96.89 he lost \$193.78 to earn one day's pay of \$128.10 for a loss of \$65.68.

Carrier again contends Mattox was paid more in the aggregate during the period than he would otherwise have earned and is entitled to nothing.

Claim Number 2 involved Towerman Deason who regularly worked 3:00 P.M. to 11:00 P.M. with Monday and Tuesday rest days. He was required to lose time on December 11 and December 12 in order to work 7:00 A.M. - 3:00 P.M. December 12 as a Train Dispatcher. December 13 and December 14 were rest days and on December 15 and December 16 he worked his regular assignment. He was again required to lose time as Towerman on December 17 and December 18 in order to work as Train Dispatcher from 11:00 P.M. on December 17 until 7:00 A.M. on December 18.

Deason's rate was \$99.07 per day. He received \$124.49 per day as a Train Dispatcher. Thus, argues the Organization he lost two days at \$99.07 on December 11 and 12 and again on December 17 and 18 in order to earn \$124.49 on December 12 and December 17. Again Carrier maintains Deason earned more in the period than he would have had he worked his regular assignment only. The Organization argues the Hours of Service Law deals with 24 hour periods and therefore Article VII(d)(3) references to loss of time also refers to a 24 hour period and not to an aggregate period.

The question arose on this property at least once before. In Third Division Award 18270 Carrier claimed a Telegraph Operator who was required by the Hours of Service Law to lay off on November 18 to work as a Train Dispatcher on November 19 was not entitled to compensation because he earned more during the period November 1 to 26 than he would have if he had not worked as a Train Dispatcher. This Board held:

"In the opinion of the Board, the Carrier misconstrues the rule. The example set out under the rule indicates that it was the intent to insure the employe against any loss of compensation for each period of time he is removed from his regular assignment in other service to protect extra dispatcher work until such extra dispatcher work has been completed and the employe is returned to his regular assignment in other service. Had any other basis been contemplated, such as weekly or monthly, it would have been an easy matter to have so provided. It is well settled that this Board cannot amend rules through interpretation."

Thus this Board concluded the intent of Rule VIII was to insure employees would suffer no loss while removed from their regular assignment to protect extra dispatcher work. We specifically found the protection extends to "loss . . . for each period of time" removed from regular service.

In Claim Number 1 Mattox worked as a Train Dispatcher from December 3 to December 13 and did not perform his clerical assignment in the interim. During that period he earned more than he otherwise would have. As he suffered no loss during the period the Claim is denied.

Again in Claim Number 3 Mattox's Train Dispatcher assignment was one continuous period interrupted only by rest days or time off mandated by the Hours of Service Law. In this uninterrupted period he earned more than he would have in his regular assignment and is entitled to no further compensation.

In Claim Number 2 Deason lost time on December 11 and 12 in order to work as a Train Dispatcher on December 12. He then returned to his regular assignment and again lost time from that assignment on December 17 and 18 in order to work as a Train Dispatcher on December 17 and 19. In each of the two separate periods Deason suffered a loss even though he did earn more in the aggregate over the entire length of time under discussion. He is entitled to be compensated for the loss in those periods.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.