

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32299
Docket No. TD-32342
97-3-95-3-174

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Consolidated Rail Corporation (Hereinafter referred to as ‘The Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers’ Department (hereinafter referred to as ‘The Organization’) Item III in particular, when the Carrier compensated Mr. Jones 5 and 1/2 hours pay instead of 8 hours pay for October 12 in the payroll period ending October 12, 1993. Mr. Jones work week began with a rest day on Oct. 6th, followed by attending the annual book of rules class on Oct. 7th, working the E-3 position on Oct. 8th, working the E-3 position on Oct. 9th. his 2nd rest day. On Oct. 10th, working the E-1 position with an additional hour at the overtime rate for giving a statement to the Carrier at the competition of his tour of duty (Rule 15) on Oct. 11th. Mr Jones was available for work and not called on Oct. 12th. The Carrier shall now compensate Mr. Jones an additional 1 and 1/2 hours for being available for work and not called on Oct. 12, 1993.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Article III of the parties Guaranteed Assigned Dispatcher Agreement, dated March 7, 1985 provides:

"III GUARANTEE

- (A) Incumbents of Guaranteed Assigned Dispatcher positions will be guaranteed 40 hours pay in each seven day period commencing on Wednesday.
- (B) The guarantee provided above will be reduced by eight hours for each day on which the incumbent is unavailable due to, but not limited to, missing call, sickness, authorized or unauthorized absence, etc.
- (C) In the event an incumbent of a Guaranteed Assigned Dispatcher position does not receive the guarantee provided in this Article, he will be paid the necessary additional hours at the straight time rate of the lowest rated position in the office."

In the week ending October 12, 1993, the herein Claimant, Mr. W. A. Jones, Guaranteed Assigned Dispatcher ("GATD") at Harrisburg, PA, had rest days, worked, and was paid as follows:

Wednesday	10-6-93	Rest day	No compensation
Thursday	10-7-93	Rules Class	8-hrs Qualifying Pay
Friday	10-8-93	E-3 Position	8-hrs Regular Pay
Saturday	10-9-93	E-3 Position	8-hrs Regular Pay
Sunday	10-10-93	Rest day	No compensation
Monday	10-11-93	E-1 Position	8-hrs. Regular Pay
Monday	10-11-93	Overtime	1-hrs. Pay at 1-1/2 rate
Tuesday	10-12-93	Not worked	6-1/2-hrs. Guarantee Pay

The Organization filed a claim contending, *inter alia*, that Claimant was shorted one and one-half hours pay during the pay period ending October 12, 1993. It contended that the Agreement required that GATD Dispatchers be paid or worked 40 hours per week as a dispatcher, and that Carrier is only permitted to reduce this guarantee for one of the reasons provided in Article III (B). The Organization maintains that Carrier is not privileged to reduce the weekly 40 hour guarantee by overtime worked on other days, when an employee is held over to give a statement, is used after hours to train an employee, etc., as to do so would render meaningless other rules of the Agreement that provide special compensation payments for service in such circumstances.

Furthermore, the Organization notes, in the history of the application of the Rule, it has never been administered in a manner whereby offsets in the guarantee were taken for overtime worked on other days, the situation under review here. Instead, the Organization insists, the clear and plain meaning of the language of the Rule, as evinced by its historical application, is that on any day that an employee was available for service, and is not used, he would be paid eight-hours pay for that day.

Carrier argues that Claimant received exactly 40 hours pay for the week ending October 12, 1993, and that is all that he is entitled to receive under the literal reading of the Agreement. His guarantee was not reduced in that week as alleged by the Organization, Carrier insists. It cites several Adjustment Board awards to support the notion that it is privileged to credit overtime earnings against weekly guarantees.

The Board notes that the Article III is not a complicated provision. In simple terms it states that Guaranteed Assigned Train Dispatchers will be guaranteed 40-hours pay in each seven day period. And in the event that a Guaranteed Assigned Train Dispatcher does not receive 40-hours pay in a particular seven day period, (s)he will be paid the necessary additional hours at the straight time rate. There is no language in the Rule limiting the source of the 40-hours pay that comprises the weekly guarantee. Accepted tenets of contract construction, therefore, foreclose this Board from reading such limitations into the Rule. If the parties wanted to limit the 40-hours pay guarantee to just straight time hours, and/or eight hours per day, the situation here, they were capable of doing so. That they did not, indicates that all hours for which pay is received during the week are to be considered as contributing to the 40-hour guarantee.

But this does not mean that any hours worked at one and one-half times the straight time rate may be counted as one and one-half hours toward the 40-hour

guarantee. In this industry there are a number of different pay classifications. The most common, of course is straight time pay. Another would be holiday pay. A third would be vacation pay. A fourth would be overtime pay. A fifth would be pay for work performed on a holiday, or pay for a sixth and/or seventh days work. We also have deadhead, travel time, and waiting time pay, to name three others. The rate of pay for each classification varies. Overtime is usually paid for at one and one-half times the straight time rate, but payment at the double the straight time rate may be required in some situations. Holiday pay is usually at straight time, but if the employee works on a Holiday the time worked is paid for at the time and one-half rate. Rest day work is usually paid for at the time and one-half rate of pay, but there are Agreements that provide for a double time rest day pay for working the second rest day.

In each situation where the required rate to be paid is greater than the straight time rate of pay, it is important not to confuse the rate being paid with the hours worked. For example, if an employee works eight hours on a holiday and is paid at the time and one-half rate, he is not receiving 12 hours pay, he is receiving eight hours pay at the negotiated rate of pay covering performance of work on a Holiday. This is more than a distinction without a difference. Since the period of Federal Control in 1917-1918, the holiday rate of pay for many non-operating Crafts was one and one-half times the straight time rate. This is not the overtime rate pay, the penalty rate of pay, etc., it is the Holiday rate of pay. And because it is computed at one and one-half times the straight time rate of pay does not mean that an employee may be considered as having worked fifty percent more hours. (S)he only works the hours worked.

The same is true with respect to overtime worked before or after an assignment. The rate of pay for such work is one and one-half times the straight time rate. As this would be applied to the case under review here, Claimant did not work overtime for one and one-half hours on October 11, 1993. He worked just one hour overtime and was paid at the time and one-half rate. Claimant was only on duty nine hours, not nine and one-half hours. He was only paid for one hour overtime, albeit at the time and one-half rate. Carrier was privileged to credit this extra hours pay toward the guarantee established by Article III, but it was not privileged to treat this hour as one and one-half hours, merely because it was required to pay Claimant at one and one-half times the straight time rate for the work performed on overtime. Because, *inter alia*, one and one-half times the straight time rate of pay is the hourly rate of pay for overtime work.

The Agreement guaranteed Claimant 40 hour's pay for the week ending October 12, 1993. For that week he was paid eight hours Qualifying pay, 24 hours Regular Pay, and one hours Overtime pay. Carrier allowed him six and one-half hours Guarantee pay. He is entitled to be paid an additional one-half hour Guarantee pay to make his total hours pay for the week equal 40.

The claim will be sustained for one-half hours pay at the rate of pay of the lowest rated position in the office.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.