

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33634
Docket No. TD-33936
99-3-97-3-456**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Please accept this appeal from decision of Chief Dispatcher J. F. Dooley, denying claim of Train Dispatcher D. Nash dated June 26, 1996 for overtime payment for Rest Day Service performed on February 6, 1996.

The initial claim and subsequent appeal is supported by rules 12(b), 19(e) and 16(c) and (d) of the Agreement.”

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.

This claim requests an additional four hours pay on behalf of Claimant for his attendance at an Investigation on February 6, 1996, which was one of his scheduled rest days. The record reflects that Carrier compensated Claimant eight hours pay for that date when it expunged his record as a result of his successful appeal concerning the discipline imposed. The issue is whether this compensation should have been at Claimant's straight

time or overtime rate of pay.

The Organization relies upon the following language in the Agreement provisions set forth below:

"Rule 12 - REST DAYS

(b) Any regularly assigned employee required to perform service on the rest days assigned to his position shall be paid at the time and one-half rate for service performed on either or both of such rest days.

Rule 16 - ATTENDING ... INVESTIGATION

(c) Employees required by the Corporation to attend discipline investigations in which the employee is not under charge shall suffer no loss in compensation.

(d) Employees covered by Paragraphs (a) and (c) above....When required to perform such service on either or both rest days eight (8) hour at the time and one-half rate of the employee's position shall be allowed.

Rule 19 - DISCIPLINE - INVESTIGATION APPEAL

(e) If the final decision decrees that the charges against the employee are not sustained, the record shall be cleared of the charge. If held out of service (suspended or dismissed), the employee shall be reinstated and compensated for all lost. . . ."

The Organization argues that the Claimant was required to attend his Investigation at Carrier's direction, and that doing so constituted performance of service under Rule 12(b), citing Third Division Awards 3462, 7029, 17316. Since the Investigation fell on his rest day, the Organization contends that he is entitled to compensation as his overtime rate under Rules 12 and 16.

The Carrier asserts that Rule 16 does not apply because Claimant himself was charged in the Investigation. It argues that Rule 19 does not support payment because the Claimant suffered no proven loss. The Carrier also contends that Rule 12(b) was not

violated because the Claimant did not perform any service for the Carrier on February 6, 1996, as set forth in the listed Train Dispatcher's duties in Rule 1(c) of the Agreement. The Carrier notes that the Investigation was postponed five times before being scheduled on the Claimant's rest day, and that the Claimant suffered no loss of pay due as a result of his attendance at the Investigation.

A careful review of the record developed on the property leaves the Board with no choice but to find that the Claimant is entitled to the additional compensation he seeks. Without deciding whether attendance at a Hearing in these particular circumstances constitutes the performance of service under Rule 12(b), we are left with the fact that the Carrier resolved the Claimant's original charge by, among other things, paying him for his attendance at the February 6, 1996 Investigation. That payment was made at the Claimant's straight time rate of pay. There is no dispute that February 6, 1996 was the Claimant's second rest day. Under the clear language of Rule 12(b), if compensation is to be paid for that day, it must be paid at the Claimant's time and one-half rate of pay. Because the Carrier determined that compensation was appropriate in the context of this fact situation, we must enforce the agreed-upon contractual rate of pay for rest day work.

AWARD

Claim sustained.

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 16th day of November 1999.