

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34002
Docket No. TD-35245
00-3-99-3-97**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railway Company (hereinafter referred to as “the Carrier”) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as “the Organization”), Articles 2(a) and 2(b), in particular when, between August 17 and August 18, 1997 train dispatcher R. P. Smith was required to perform a total of sixteen (16) hours of service in a twenty-four (24) hour period. Mr. Smith was compensated at the pro rata rate for both 8 hour shifts.”

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.

The Carrier’s contention that the claim is untimely is without significance.

The Claimant, a Train Dispatcher, was assigned to the Guaranteed Assigned Train Dispatcher Board at the centralized dispatching office in Fort Worth. He was assigned to fill a vacancy in a relief Assistant Chief Dispatcher ("ACD") position. The temporary vacancy in this position included two short turnaround instances (eight-hour shifts within 24 hours) each week ("double backs").

The Claimant was assigned to work on August 17-18, 1997 from 7:00 A.M. to 3:00 P.M. and from 11:00 P.M. to 7:00 A.M. These hours were part of the regular ACD relief assignment. He was paid at the straight time rate for these hours. The claim is for payment at the overtime rate for the second eight-hour shift.

The Organization cites Rule 2(b), which states:

"Time worked in excess of eight (8) hours on any day exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis."

There was no "transfer" involved here. Thus, if there were no other considerations involved, the payment of overtime as requested would be required.

There are, however, other considerations. The record substantiates that certain relief positions have been regularly bulletined and assigned with short turnarounds and that all hours have been paid at straight time. There can be no question of the Organization's awareness and acceptance of such arrangement. This is more than a "past practice," because it is embodied in the conditions of the bulletined position.

As a condition of assignment to the Guaranteed Assigned Train Dispatcher Board, the Claimant is required to work as assigned. Here, he was filling a portion of a relief assignment, for which the regularly assigned employee would have received straight time pay, despite the short turnarounds. Consequently, the parties have agreed to this arrangement, despite the precise wording of Article 2(b). The pay received by the Claimant matched that which would have been granted the regular occupant of the relief position.

Form 1
Page 3

Award No. 34002
Docket No. TD-35245
00-3-98-3-97

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of April, 2000.