

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37903
Docket No. TD-38161
06-3-04-3-76**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(BNSF Railway Company)

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railroad 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’), Article 2(d) of the current Schedule in particular when on October 22, 2002, train dispatcher S. V. Jackson was denied proper compensation for service on this date, and on October 27, 2002, when the Carrier required the claimant to provide sixth day service and provided the claimant compensation at the pro rata rate of pay, rather than the required overtime rate of pay.”

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 operative facts are not in dispute. The Claimant was assigned to the Guaranteed Assigned Train Dispatcher Board (GATDB) in the centralized dispatching center in Ft. Worth, Texas. GATDB employees assist in filling temporary vacancies of regularly assigned employees who are off for sickness, vacation, personal reasons, and so forth. GATDB employees are guaranteed a minimum of five days compensation for each Monday through Sunday workweek in which they are fully available.

During the workweek involved in this dispute, the Claimant observed rest days on Monday and Tuesday, October 21 and 22, 2002. He was lined up to work a 6:45 A.M. Clovis East vacancy on Wednesday, October 23, 2002.

At approximately 4:15 A.M. on Wednesday, October 23, the Claimant was instructed to report as soon as possible to complete the shift on 3rd Panhandle East, due to the incumbent going home sick. The Claimant reported for duty at 5:15 A.M. and worked the 3rd Panhandle East position until the completion of the shift at 6:45 A.M., a total of one hour and 30 minutes. He then began work on the Clovis East position at 6:45 A.M., this being the position for which he had initially been called to protect. He worked this position until 2:15 P.M., at which time he was relieved under the Hours of Service Act.

On Thursday, Friday, Saturday, and Sunday, the Claimant worked an eight hour shift each day. The Carrier determined that he worked a total of 41 hours during the Monday through Sunday workweek. Accordingly, the Claimant was paid 40 hours at the straight time rate and one hour at the overtime rate.

The Organization contends that the Claimant performed service on a vacancy originating on October 22, 2002. Consequently, in its view, October 22 represents a day of service and the Claimant should have been paid eight hours straight time instead of one hour overtime that he was paid for actual time worked on October 23, 2002. Moreover, the Organization asserts that by counting October 22 as a separate day, his shift on Sunday, October 27 would have been his sixth day of service and, therefore, he was entitled to eight hours at the overtime rate for that day instead of the straight time rate that he was paid.

The Carrier argued on the property that the Claimant was properly compensated in accordance with the applicable Rules. It contended that the Claimant performed no service on Tuesday, October 22 and, therefore, the

Organization's contention that the Claimant performed service on six separate days rests on an erroneous foundation. Moreover, because the Claimant reported and was paid nine hours for service on October 23, there is no basis for payment of one day's pay on October 22, 2002.

The following Rules are pertinent to a resolution of this dispute:

"Article 2(d) CALLS

Except as provided in Article 2, Section (b) and Article 3, Section (b), a regularly assigned train dispatcher called to perform service, and reporting, outside the hours of his regular assignment shall be paid actual time for such service, with a minimum of two (2) hours, at rate of time and one-half of the position for which he is called.

An extra train dispatcher called to perform train dispatching service, and reporting, shall be paid at minimum of one (1) day's pay at the rate of the position for which called.

Article 3(b) SERVICE ON REST DAYS

A regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

Extra train dispatchers who are required to work as a train dispatcher in excess of five (5) consecutive days shall be paid one and one-half time the basic straight time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days."

The burden in this case is on the Organization to demonstrate a violation of the Agreement. Careful review of the record in its entirety convinces the Board that the Organization's burden has been met with respect to its claim for compensation under Article 2(d) but not pursuant to Article 3(b) of the Agreement.

Looking at the relevant language, it is at once apparent that Article 2(d) is clear on its face. The parties do not dispute that the Claimant's assignment on the

GATDB entitles him to benefits afforded to Extra Train Dispatchers. Unlike a regularly assigned employee who is paid a two hour minimum if he reports after being called to service outside the hours of his regularly assigned position, an Extra Train Dispatcher who is called is to be paid "... a minimum of one (1) day's pay," if he reports for service, "at the rate of the position for which called." The Claimant was called to cover the vacancy created when the third Trick Dispatcher left his position early. He reported for service and was entitled to be paid one day's pay at the rate of the 3rd trick position for which he was called. Whether the 3rd Trick Dispatcher vacated his position an hour after he reported on October 22, 2002, or whether he vacated his position one and one-half hours before the conclusion of his shift on October 23, as was the case here, the minimum reporting pay under Article 2(d) for covering the vacancy is still the same for the Extra Train Dispatcher who reports. That language has been plainly expressed by the parties and the Board has no authority to deviate from it.

It does not necessarily follow, however, that the Claimant was entitled to further compensation pursuant to Article 3(b) of the Agreement. Under this provision, Extra Train Dispatchers are paid one and one-half times the straight time rate of pay for service performed on rest days, but only when they are "required to work as a train dispatcher in excess of five (5) consecutive days. . . ." The Claimant did not work in excess of five consecutive days. He did not work on his rest day. The Claimant worked from Wednesday, October 23 through Sunday, October 27, 2002, for a total of five days.

For the reasons set forth above, the claim must be sustained in part and denied in part. The Claimant shall be compensated for one day's pay under Article 2(d) less the overtime already paid, for responding to the vacancy created on the prior shift. The Organization has not established that the Claimant is entitled to any further compensation for service on his rest day under Article 3(b) and, therefore, that portion of the claim is hereby denied.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 5

Award No. 37903
Docket No. TD-38161
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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 22nd day of August 2006.