

Award No. 18957
Docket No. TD-19045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(PERE MARQUETTE DISTRICT)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chesapeake & Ohio Railway Company, Pere Marquette District (hereinafter referred to as "the Carrier"), violated the existing Agreement between the parties, Article II (b) thereof in particular, when, on the dates indicated in paragraph (c) below, the Carrier required the individual named Claimants to remain on duty in excess of eight (8) hours and then failed and refused to compensate Claimants for such overtime.

(b) The Carrier now be required to compensate the individual Claimants and in the amount shown in paragraph (c) below.

(c)

Claimant	Date on which overtime occurred	Amount of Overtime
D. C. McManaman	1/20/69	5 hrs.
D. C. McManaman	1/21/69	5 hrs.
C. J. Ball	1/28/69	4 hrs.
C. R. Yeager	2/3/69	5 hrs. 30 mins.
C. R. Yeager	2/4/69	6 hrs. 30 mins.
G. L. Rozell	2/8/69	3 hrs.
A. L. Adair	2/18/69	5 hrs.
A. L. Adair	2/26/69	4 hrs.
D. C. McManaman	2/24/69	2 hrs. 35 mins.
D. C. McManaman	2/25/69	4 hrs. 50 mins.
A. L. Adair	2/27/69	4 hrs.

Article VIII (a) of the agreement here in evidence is titled "Basis of Employment-Compensation" and reads in pertinent part as follows:

"Train dispatchers shall be monthly rated employees. A day's pay on regular positions shall be computed on the basis of the calendar days in the month less rest days.

Wage adjustments will be made on the basis of 200 hours a month. Basic monthly rates as of October 1955, are as follows."

All claimants were paid all necessary away-from-home expenses incurred while making these review trips. On those days when less than eight hours was consumed in making a review trip, no dispute exists. On the days when more than eight hours was consumed all time in excess of eight hours is claimed as time "worked" as a train dispatcher and accordingly time to be paid for at time and one half dispatchers' rate under Article II (b), the daily overtime rule of the basic schedule agreement here in evidence.

The claims here presented have been progressed in the regular order on the carrier and except for the claims in behalf of McManaman they are properly before your Board for final disposition on merits.

OPINION OF BOARD: For many years Carrier has required train dispatchers to review the territory under their jurisdiction every two years. Carrier has never paid time in excess of eight hours during the review at the overtime rate. According to the record, the employes have not, prior to the filing of these claims, made a claim that time spent on a review trip in excess of eight hours should be subject to overtime penalty.

The Organization does not contest Carrier's right to require this service. It does, however, contest Carrier's right to require service in excess of eight hours during a review trip without application of overtime payment.

The Agreement provides:

"ARTICLE II (b) OVERTIME

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.

The phrase 'on any day' as used herein shall mean the 24 hours succeeding the commencement of an assignment, except on regular relief assignments in Canada.

ARTICLE VIII (c) COMPUTING OVERTIME

It is agreed that the 'rate of time and one-half' referred to in Article II (b) of this agreement as well as the expressions 'rate of time and one-half' and 'one and one-half times the basic straight time rate' as these appear in Article III (b) of this agreement will refer to work as 'train dispatcher' as defined in Article I of this agreement, and will be computed for all employes subject to the Dispatchers' agreement on the following basis:

The time and one-half or overtime rate will be one and one-half the hourly rate computed by dividing the monthly

rate of the position of train dispatcher upon which such service is performed by 174 hours. In the application of this rule, composite monthly rates arrived at through the operation of Section (b) of this Article VIII covering computation of monthly rates for regular relief dispatchers will not be considered."

The basic question which must be decided by the Board is whether the review trip is work as a train dispatcher. If it is then by the clear terms of the Agreement it must be compensated as provided by Article II (b).

While neither Carrier or the Organization has explained the purpose of the trip at length, it is clear that its purpose is to maintain the dispatchers familiarity with a territory. The obvious benefit to Carrier and the dispatcher of this procedure does not require elaboration.

Equally clear is the fact that in making a review trip the dispatcher is engaged in "work as 'train dispatches' as defined in Article I." Article I (b) states:

(b) DEFINITIONS

1. ASSISTANT CHIEF DISPATCHERS

This class shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment thereto; and to perform related work.

2. TRICK DISPATCHERS, RELIEF DISPATCHERS, EXTRA DISPATCHERS

This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

NOTE: These definitions shall not operate to restrict the performance of work as between the respective classes herein defined, but the duties of these classes may not be performed by officers or other employes. The compensation of employes performing the work of two or more of the classes herein defined shall be that of the highest rated class of work which they perform."

The Claimants are already fully qualified in their positions. The review trip does not serve to train them to perform their tasks. It does, however, enable them to keep up to date on developments in a territory and falls within the work defined in Article I. Therefore the time spent in such work must be compensated as provided by Article II (b).

The fact that no claim has been previously filed does not establish a binding practice which will defeat the claim. Practice may, of course, have such an effect in a proper case. Here, however, we simply have a matter which has

gone unchallenged by one party. It is not possible to infer from this that mutuality which is required for the formation of a binding practice.

Finally, Carrier states that Claimant McManaman is not covered by the Agreement since he is an extra dispatcher and is covered by another agreement when covering his regular position. The Board holds that Claimant McManaman's service on the dates of claim was work as an extra dispatcher and that he may make a claim resulting from such service under this Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1972.