

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DELAWARE & HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: "Claim for time lost five (5) working days, October 3, 4, 5, 24 and 25, 1940, amount \$49.85 for Train Dispatcher F. B. Sullivan, Albany Office, who was absent on the above dates due to illness."

EMPLOYES' STATEMENT OF FACTS: "Train Dispatcher Sullivan has been in the service of this carrier over twenty-five years.

"On the above dates, it was necessary to relieve Dispatcher Sullivan due to illness. The Carrier's final decision in this case is attached hereto as Exhibit TD-4 and shows that they have declined to pay the claim.

"This claim is based on a letter from the Chairman, Board of Disciplining Officers, dated June 25, 1940, (TD-1), which letter notified the American Train Dispatchers Association that under certain conditions this Carrier had been allowing pay to its employees in dispatching service on sick leave and would continue to handle sick claims on the merits. The Carrier's letter of June 25, 1940 was the result of an Agreement between the parties during negotiations on the present Agreement dated April 1, 1940. Employees' Exhibit TD-2 attached hereto shows that the Carrier's letter was made a part of the present Agreement in effect between the parties on this property.

"The Carrier under date of May 26, 1941, declined to join in submitting the claim to your Honorable Board. We therefore, submit it ex parte."

POSITION OF EMPLOYES: "The train dispatchers on the Delaware & Hudson Railroad became organized in 1939 and our first conference with the Carrier was on September 27, 1939, at which time we satisfied the Carrier of our right to represent these employees. The Committee presented a proposal for a working agreement which contained the following rule:

"Time lost account personal sickness shall be paid for up to a reasonable amount of time."

"In subsequent conferences on the adoption of rules, the Carrier objected to putting into the agreement any rule providing for payment for time off sick. They admitted, however, that it had been the practice to pay the dispatchers while off sick, and the dispatchers said that the past practice had been satisfactory and asked that the Carrier give them assurance that past practice in this respect would be continued. The Carrier indicated that they intended to continue the past practice and asked if we would accept a letter in which it would be stated that the past practice was to be continued. We contended for a rule in the agreement but upon being given assurance that sick pay claims would be allowed, as in the past, we accepted, as a part of

POSITION OF CARRIER: "The issue involved in this case is the same as that concerned in Case No. 3.40 TD which the Organization has appealed to the National Railroad Adjustment Board along with this case and one other. The Management submits the argument and evidence presented in Case No. 3.40 TD to sustain its position on the instant case."

OPINION OF BOARD: Train Dispatcher Sullivan was off duty on account of illness on October 3, 4, 5, 24, and 25, 1940. It was necessary to fill his position and the relieving employe was compensated at the established rate of pay. Claim was filed for the time lost for the five working days. It was denied by the Carrier.

The same contentions are made by the Employes and the Carrier in this case as in Docket TD-1694 and the Award in that case, being 1678, is controlling. It necessarily follows that this case is remanded for development of specific facts concerning the past practices of the Carrier in regard to the payment of time lost on account of personal sickness with the right, in case of failure to agree, to the petitioner to return the matter to the Board with such evidence as may be developed by the conference.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 case be remanded for development of the specific facts set out in the opinion.

AWARD

Case remanded for conference and adjustment as indicated by the Opinion and Findings, with the right, in case of failure to agree, to the petitioner to return this matter to this Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1942.