

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for time lost account of sickness for Train Dispatcher F. B. Sullivan, Albany, N. Y. office, nine (9) working days, December 5th, 6th, 7th, 8th, 9th, 10th, 12th, 13th and 14th, 1940, at the regular daily rate of \$9.97, a total of \$89.73.

EMPLOYEES' STATEMENT OF FACTS: F. B. Sullivan, Train Dispatcher in the Albany N. Y. office was compelled to be absent from duty account of illness. Mr. Sullivan was confined to St. Peters Hospital during a part of his illness; he was absent from duty a total of nine (9) working days, for which he was not paid.

Claim has been handled in the usual manner and appealed up to and including the highest authority designated by the Carrier to whom appeals may be made; but failing to adjust the dispute, the Carrier was notified by letter dated September 22nd, 1941, that the dispute would be referred to the Third Division, National Railroad Adjustment Board for hearing and decision.

POSITION OF EMPLOYES: This claim is based on a letter given the negotiating committee at the time the Agreement covering hours of service, wages and working conditions for train dispatchers was signed; the letter being made a part of the Agreement. It reads as follows:

"Albany, N. Y.
June 25, 1940.
012.32

Mr. J. B. Springer,
Vice President, A. T. D. A.
Albany, New York.

As you have been informed, under certain conditions this Railroad has been allowing pay to its employees in dispatching service on sick leave.

This management will continue to handle each case which arises and decide it upon the merits.

(Sgd.) F. L. Hanlon, Chairman,
Board of Disciplining Officers."

The understanding of the Committee was that train dispatchers would continue to be paid while off sick, as in the past, in all legitimate cases, and that this letter meant that the past practice would be continued.

Management on the other hand, contends that the letter means nothing and that they are not obligated to pay sick pay claims.

Management has consistently denied sick pay claims since the signing of the Agreement on June 25, 1940, making the reply that claims are being handled strictly in accordance with the letter of June 25th, 1940. Claim denied.

We have already submitted to this Board three claims for sick pay in which the same principles and the same questions are involved. These cases are identified as Dockets TD-1693, TD-1694 and TD-1695. We have presented extensive argument in those cases, and rather than burden the Board with a repetition of the same argument, which you have already heard, we respectfully refer you to our submissions in the above identified cases. The same argument presented and the Exhibits in those cases applies to this case and are hereby made a part of this case.

In discussing the present case and others with the General Manager's Committee on the property we suggested to the Carrier representatives that they agree to hold all subsequent sick pay claims until after those submitted to the Board and identified as Dockets TD-1693-94-95 have been decided and apply the decision in those cases to this and future sick pay claims. This the carrier was unwilling to do, which leaves our Organization no other alternative than to continue to submit sick pay claims to your Board as they arise and to ask your consideration and decision in each case.

Our position is that the Carrier is obligated to pay all legitimate sick pay claims; that the case of Dispatcher Sullivan is a legitimate claim and that it should be paid. That management is attempting to evade an obligation clearly understood and accepted in good faith by the representatives of the train dispatchers.

We respectfully ask your Honorable Board to sustain our claim.

CARRIER'S STATEMENT OF FACTS: On the dates of December 5, 6, 7, 8, 9, 10, 12, 13 and 14, 1940, Train Dispatcher F. B. Sullivan, employed in the Albany Train Dispatchers' Office, was relieved account illness. It was necessary to fill Mr. Sullivan's position during his absence, the relieving employe being paid the established rate for service performed.

POSITION OF CARRIER: The issue involved in this case is the same as that concerned in Case No. 3.40 TD, Docket TD-1693, which the Organization has appealed to the National Railroad Adjustment Board. Management submits the argument and evidence presented in Case No. 3.40 TD, Docket TD-1693, to sustain its position on the instant case.

OPINION OF BOARD: This is a companion case of Docket TD-1694, Award No. 1678. The Carrier has asked the Board to review the ruling in Award 1678. This the Board has done. Awards of this Board should be followed, and only where the award is based upon false reason should it be overruled.

The Board is of the opinion that the right conclusion was reached in that award. Moreover, the letter dated June 25, 1940, was written by the Carrier, and the rule of law is well established that where a written instrument is susceptible of two meanings, it should be construed in favor of the party who did not prepare it. Taking the letter as a whole, the Board is of the opinion that the correct results were reached in Award No. 1678.

From what was said in that award and in Docket No. 1694, Award No. 2061, it follows that this award must be sustained.

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 agreement was violated by the Carrier as contended by the Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.