

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE VIRGINIAN RAILWAY COMPANY**

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

(1) The Virginian Railway Company violated Article 3 of an Agreement governing rates of pay, hours of service and working conditions of Train Dispatchers when it required Claimant A. R. Perry to perform service on a rest day assigned to his position when no unavoidable emergency existed and when said Virginian Railway Company declined and continues to decline to pay said Claimant at rate of time and one-half.

(2) That The Virginian Railway Company be required to pay Claimant A. R. Perry for eight (8) hours at rate of time and one-half for service performed on Monday, March 27, 1950, one of the rest days regularly assigned to his position.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between The Virginian Railway Company and its train dispatchers represented by the American Train Dispatchers Association governing rates of pay, hours of service and working conditions, effective October 21, 1943, revised effective September 1, 1949. Said Agreement, by this reference, is made a part of this submission as though fully incorporated herein and hereafter will be referred to simply as the Agreement. Claimant is an employe of the Carrier of the class to which the rules of said Agreement are applicable.

Article 3 of the Agreement reads as follows:

"A. (a)(i) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest possible extent. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week. A regularly assigned train dispatcher who is required to perform service on rest days assigned to his position will be paid at the rate of time and one-half for service performed on either or both of such rest days.

(a)(ii) An extra train dispatcher required to work as train dispatcher in excess of five (5) consecutive days shall be paid one and one-half times 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.

There is some conflict in the decisions of the Board upon the issue presented. By far the greater number of decisions hold that attendance upon investigations does not constitute 'work' in contemplation of the basic day, overtime and call rules. Awards Nos. 134, 409, 487, 605, 773, 1032, 1816, 2132, 2508. . . ."

The merits of the claim in this case must be decided under the terms of Article 8 which reads as follows:

"ARTICLE 8

Discipline:

(a) A train dispatcher shall not be disciplined, demoted or discharged without proper hearing as provided in the following sections. Suspension pending a hearing shall not be deemed a violation of this principle.

Hearings:

(b) A train dispatcher against whom charges are preferred, or who may consider himself unjustly treated, shall be granted a fair and impartial hearing by the Superintendent or his representative within ten (10) days after notice by either party. Such notice shall be in writing and shall clearly specify the charge, or nature of the complaint. The decision shall be rendered within ten (10) days from date of hearing.

Appeals:

(c) If decision is not satisfactory, the case may be appealed to the next higher officer, up to and including the highest official designated by the railway to hear and render decisions; appeals must be made within fifteen (15) days from the date of the decision. Hearing on appeals shall be granted promptly and decisions rendered within fifteen (15) days from close of hearing.

Reinstatements:

(d) If the decision of the original hearing or on an appeal be in favor of the train dispatcher, his record shall be cleared of the charge and if suspended, demoted, or dismissed on account of such unsustained charge he will be reinstated and compensated for the wage loss, if any, less the amount earned in other employment.

The train dispatcher shall have the right to have a representative of his choice present at any hearing or investigation to hear all oral or to read all written testimony and to bring out any facts in connection with the case. If transcript of the proceedings of the original hearing or on appeals is made, a copy of the transcript will, upon request, be furnished the train dispatcher or his representative."

Attention is called specifically to the provisions of Article 8(d). This clearly provides that if the decision on the original hearing is in favor of the train dispatcher his record shall be cleared of the charge and if he has suffered any wage loss he shall be compensated for such loss. The decision of the original hearing in this case was in favor of claimant Perry and his record is clear of the charge. He did not suffer any wage loss in attending the hearing and consequently he is not entitled to the payment he claims. The carrier has already properly complied with its agreement in this case and the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, together with eleven other employees participating in the movement of two colliding trains, was charged with responsibility therefor and noticed in to a hearing to consider said charges. As a result of the hearing, responsibility was placed upon two of the twelve employees charged and claimant was absolved.

The day of hearing was claimant's rest day, and relying upon Article 3 of the Agreement, the pertinent portion of which is set forth below, claim was made for eight hours' pay at the rate of time and one-half:

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

Carrier, on the other hand, contends claimant did not perform "service" on the day in question as that word is used in the Agreement, and, citing Article 8 as applying, urges that its responsibility to claimant has been discharged, his record having been cleared, no wage loss being suffered by him.

We believe it is clear that the word "service" as used in Article 3 was intended at most to refer to the performance of labor primarily for the benefit of the Carrier. To give the word its bare, literal meaning not so connected would lead to absurdity. In the instant case, Carrier did not summon claimant to a hearing merely as a witness to aid it in fixing responsibility upon others so that the case might be brought under the Awards relied upon by claimant, particularly Awards 2032 and 3462. He was present as a party in interest, one of twelve employees participating in the movement of two trains, each asserting its right of way on a single track, with the consequent disastrous results. Until the facts were adduced upon hearing, he stood upon the same footing as the conductor and telegraph operator who were ultimately found guilty of the common charge. Clearly there was a mutuality of interest which defeats the possible application of Article 3 (Awards 487, 4909).

The Organization in its Answer to Carrier's Rebuttal Statement implies that the Carrier acted arbitrarily in charging claimant because, as it alleges, the records which he made in connection with the issuance of the train orders were in the hands of the Carrier at all times and his responsibility could have been determined therefrom. The accuracy of the record was subject to challenge by the others involved, and in fairness to all concerned, claimant's personal presence would seem justified. There is nothing in the submission to show this to be a case of indiscriminate charging to avoid payment of compensation to summoned employees.

The subject of investigation is expressly covered by Rule 8, but nothing contained therein supports that instant claim, there being no wage loss suffered (Award 1816).

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 Employees involved in this dispute are respectively carrier and employees 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 under the facts and circumstances disclosed by the record, claimant was personally interested in the investigation he attended upon his rest day at the direction of the Carrier, and the Agreement does not support the claim asserted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of June, 1951.