

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE ANN ARBOR RAILROAD COMPANY

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

The Ann Arbor Railroad Company (hereinafter referred to as the "Carrier") shall, as is required by Article III-(a) of the currently effective agreement, pay to Train Dispatcher D. L. LaGuire a day's pay at the time and one-half rate for service performed on Friday, April 9, 1954, (a rest day assigned to Claimant LaGuire's position in accordance with Article III-(b)) on which date the Carrier had instructed him to attend an investigation in which he had no mutuality of interest.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute, effective July 1, 1921, and amendments thereto including Memorandum of Agreement, effective September 1, 1949, covering wages and working conditions for train dispatchers. A copy of this agreement is on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

The following rules of this Agreement are pertinent on this dispute:

Article III (a)—Memorandum of Agreement effective September 1, 1949:

"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 extent possible. 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 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

"ARTICLE III

* * * *

(b) SERVICE ON REST DAYS

A regularly assigned train dispatcher who is 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 train dispatcher in excess of five 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.

* * * *

The Employees have recognized the absence of a rule requiring the payment requested in the instant case by proposing the incorporation of a rule which would require such payment into an agreement between the parties.

In the Statement of Claim, the allegation is made that:

"* * * the Carrier had instructed him to attend an investigation in which he had no mutuality of interest."

Mr. LaGuire, prior to the commencement of the investigation, was not accused of any infraction of any of the rules and regulations of the Carrier in so far as the mishandling of train orders for train Extra West, engine 50, at Hallett on April 3, 1954, is concerned, and the Trainmaster attempted to hold the investigation in connection with the charges against the operator-leverman without the necessity of Mr. LaGuire's presence, through reference to records on file dealing with the occurrence.

However, the questioning of the operator-leverman had scarcely commenced when it became apparent that the operator-leverman was going to endeavor to shift the responsibility for the irregularity elsewhere.

When this became apparent, the interests of Mr. LaGuire, the train dispatcher on duty at the time of the occurrence and with whom the operator-leverman had conversed and obtained instructions with respect to the correct number of train order involved, also the clearance card issued to the conductor of the crew of Extra West, engine 50, became very much involved.

While Mr. LaGuire was asked to be present as a witness and not as an accused, he was a party to the transaction being investigated, and the propriety of his actions in connection therewith as well as the accuracy of his report concerning said incident could not but be an integral part of the inquiry. It was definitely to his interest to be present to assist with his testimony in establishing the accuracy of his report and the propriety of his conduct to the end that the entire matter be cleared up at that time, rather than entailing the necessity of a subsequent investigation directed specifically toward a possible infraction on his part.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: As we view the record the only question presented for determination is an interpretation of Article III of the Agreement as it applies to the fact situation which gave rise to this claim.

The claim was filed on account of Claimant attending an investigation in the Trainmaster's office on his rest day. No charge was made against him and he attended to appear as a witness for Carrier. The time spent in attendance at this hearing was one hour, 3:00 P. M. to 4:00 P. M. on April 9, 1954. However, it is alleged that he was notified to be available in the morning. No definite time for the hearing was specified, and at 2:30 P. M. he was advised to appear at 3:00 P. M.

On behalf of the parties a definition of the word "service" is stressed. The Organization contending that any service performed on his rest day at the direction of the Carrier in its interest is intended by the provisions of Article III; Carrier that service performed is contemplated as meaning service as a part of usual duties of dispatching trains. Also that no specific rule provides payment for giving information when off duty relative to what occurred during a tour of duty and that employees requested a rule to cover in October of 1952.

On behalf of the Organization there is cited Award 3462, 3966, 4700 and 6736 and others.

Respondent Carrier cites Article II on the proposition that if any pay is due it is on pro rata rate and on denial of claim, Awards 4909, 4910 and 4912 on the mutuality of interest doctrine. Also, Award 3343 on proposed rule, and First Division Awards 11878 and 13078 on the same subject. Also cited are Awards 134, 409, 2132, 2512 and 3230.

It is also stated that this is the first time in over thirty years that the Organization has contended that, when a Dispatcher called in on his off duty day to give information, that it has been the subject of dispute on the matter of compensation.

We believe Article III is specific and that (a) of the Article requires payment as claimed. We adopt the reasoning used in Award 3462 on the meaning of the word "service" and that it is broader in its scope than the word "work", and that "service" as used here means any service rendered the Carrier by a Train Dispatcher on his required rest day. Also see Award 3966 on the proposition that in such a situation failure to pay ignores the fact that the employee's time is being appropriated.

We believe the rule cited, Article III (a) is unambiguous and clear. Payment should be at rate of time and one-half as provided.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.