

Award No. 7629

Docket No. TD-7800

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(a) The Delaware and Hudson Railroad Corporation, herein-after referred to as "the Carrier," failed to comply with the provisions of the currently effective Agreement between the parties, particularly Article 4-(h) thereof, when it refused and continues to refuse to pay extra train dispatcher F. Q. Bethel the amount to which he is entitled if paid in accordance with the provisions of Article 4-(h).

(b) The Carrier shall now pay to extra train dispatcher F. Q. Bethel the amount of \$16.88 which represents the difference between what he received and what he would have received had he been paid in accordance with the provisions of Article 4-(h).

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties to this dispute bearing the effective date of September 1, 1948, and amendments thereto, including a Memorandum of Agreement dated Albany, New York, February 26, 1952, governing Rates of Pay, Hours of Service and Working Conditions of train dispatchers. A copy of these Agreements are on file with your Honorable Board and by this reference are made a part of this submission the same as though fully incorporated herein.

Article 4-(h) of the current Agreement as amended in the Memorandum of Agreement dated February 26, 1952, is pertinent to this dispute and, for the convenience of the Board, is quoted as follows:

"ARTICLE 4

"(h) Adequate extra forces of qualified dispatchers will be maintained at each dispatching office and when an extra train dispatcher is needed, the senior extra dispatcher shall be called and shall be required to report unless on leave of absence, or prevented by sickness or other justifiable reasons, which reasons must be given the Chief Dispatcher in writing.

When extra dispatchers are called from their regular assignments to perform service as train dispatchers, they will be paid the

"We have further shown that the Agreement provides that when the change from one service to the other requires loss of time on account of the Hours of Service Law, compensation shall not be less than it would have been had the occupant continued on and worked his regular assignment.

For the reasons stated above a sustaining Award of the claim for \$16.88 is in order. We pray your Honorable Board to so hold.

CARRIER'S STATEMENT OF FACTS: Extra Train Dispatcher Francis Q. Bethel owned a regular assignment as telegrapher 6 A.M. to 2 P.M., Monday to Friday, inclusive, rate of pay \$1.913 per hour.

Extra Dispatcher Bethel was called and used as a dispatcher on Saturday and Sunday, June 26 and 27, 1954, from 2:45 P.M. to 10:45 P.M. at a rate of \$22.16 per day.

Due to the Hours of Service Law, Mr. Bethel could not work his regular telegrapher's assignment starting at 6 A.M., June 28, 1954.

Mr. Bethel was paid two days' pay at the train dispatcher's rate of \$22.16 per day for service as a dispatcher on June 26 and 27, 1954.

POSITION OF CARRIER: Claim involves interpretation and application of Article 4 (h) of the Train Dispatchers' Agreement which reads as follows:

"Adequate extra forces of qualified dispatchers will be maintained at each dispatching office and when an extra train dispatcher is needed, the senior extra dispatcher shall be called and shall be required to report unless on leave of absence, or prevented by sickness or other justifiable reasons, which reasons must be given the Chief Dispatcher in writing.

"When extra dispatchers are called from their regular assignments to perform service as train dispatchers, they will be paid the train dispatcher's rate while working in that capacity, but if the change from one service to the other requires them to lose time on account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on and worked their regular assignment."

Due to performing service as a dispatcher on June 26 and 27, 1954, Mr. Bethel lost one day, June 28, 1954, on his regular telegrapher's assignment due to the Hours of Service Law. It is the carrier's position that since he earned two days' pay as a train dispatcher, he has been properly paid under Article 4 (h) quoted above.

In this case the employees have claimed that Mr. Bethel lost two days' pay at overtime rate as a telegrapher for June 26 and 27, 1954, his rest days, due to the fact that the regularly assigned relief telegrapher did not work the position on those dates and an extra telegrapher was not available. It is the carrier's position that Article 4 (h) only protects the earnings of extra dispatchers on their regular assignments and that the rest days of Telegrapher Bethel were not a part of his regular assignment.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: The Claimant here alleges that he was not properly compensated, within the meaning of Article 4 (h) account of performing extra Dispatcher service on Saturday and Sunday, each being rest days of his assignment as Telegrapher. Claimant had dual seniority as a Telegrapher and Dispatcher, and in the latter craft was the senior extra man available.

The Organization takes the position that inasmuch as the Claimant was entitled to, and instructed to perform the extra Dispatcher work on the rest days of the relief position he occupied he is now entitled to be made whole to the extent of \$16.88, said sum representing the difference in what he was paid, and what he should have been paid within the meaning of Article 4 (h) which reads as follows:

"ARTICLE 4. (h) Adequate extra forces of qualified dispatchers will be maintained at each dispatching office and when an extra train dispatcher is needed, the senior extra dispatcher shall be called and shall be required to report unless on leave of absence, or prevented by sickness or other justifiable reasons, which reasons must be given the Chief Dispatcher in writing.

"When extra dispatchers are called from their regular assignments to perform service as train dispatchers, they will be paid the train dispatcher's rate while working in that capacity, but if the change from one service to the other requires them to lose time on account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on and worked their regular assignment."

The respondent contends that the Saturday and Sunday in question were rest days of Claimant's position of Operator, and as such were not part of his regular assignment, and that he was properly compensated for services as an extra Dispatcher within the meaning of Article 4 (h), which was designed and intended to make an extra train Dispatcher whole for his regular assignment within the meaning of Rule 25 (a). It was further asserted by the respondent that the Organization's claim here, if allowed, would modify the Rest Day Rule of the effective agreement.

The record indicates that the Claimant was the occupant of an Operator position, assigned hours 6:00 A.M., to 2:00 P.M., Monday thru Friday, with Saturday and Sunday as assigned rest days.

On June 24, 1954, the Chief Dispatcher advised as follows:

"Extra Dispatcher, F. Q. Bethel, regular assignment as an operator, first trick 'SJ' side wire with Saturdays and Sundays as rest days. At present time due to shortage of operators relief position No. 2 which covers 'S-J' side wire on Saturdays and Sundays is cancelled. Bethel working his rest days at time and one half . . ."

We cannot agree with this respondent that Saturdays and Sundays were not then a part of Claimant's regular assignment or that there existed a temporary vacancy. Rather its (Carrier's) action amounted to a cancellation of his position which established Saturday and Sunday as rest days. It is to be further noted that he was directed to perform rest day service on what was a seven day Operator position, and as such was then and there a part of the Claimant's regular operator assignment; and on which, absent an extra operator, as here, Claimant was entitled to perform rest day service. It is also noted that while he was entitled to perform the extra Dispatcher service, he did so at a time and on days that were then a part of Claimant's regular Telegrapher assignment and should have been paid as if he had worked his assignment within the meaning of Article 4 (h).

This claim is valid and warrants a sustaining award.

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 effective Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 29th day of January, 1957.