

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" failed to comply with the provisions of the currently effective Agreement between the parties, particularly Regulation 4-C-1 thereof, when it refused and continues to refuse to pay the claimants referred to in sub-paragraphs (1) and (2) hereof the amounts to which they were entitled for attending Classes on Book of Rules and Special Instructions.

(b) The Carrier shall now pay to:

(1) Train Dispatchers J. T. Kinsley, A. E. Drook and N. G. Gefeke, each, compensation for one day's pay at rate of time and one-half for being required by the Carrier to attend classes on Book of Rules and Special Instructions on December 14, 1954, a rest day regularly assigned to their respective positions.

(2) Train Dispatcher E. C. Bond, compensation for one day's pay at rate of time and one-half for being required by the Carrier to attend classes on Book of Rules and Special Instructions, on December 15, 1954, a rest day regularly assigned to his position.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the Pennsylvania Railroad Company and Train Dispatchers, Movement Directors, Power Directors, Assistant Power Directors and Load Dispatchers, employees of The Pennsylvania Railroad Company represented by the American Train Dispatchers Association. Part I of said Agreement contains provisions governing train dispatchers and became effective September 1, 1938, except as otherwise designated. A copy of this Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein.

The pertinent Rule set forth in Regulation 4-C-1 of the Agreement applicable to this dispute provides as follows:

"4-C-1. (a) (Effective September 1, 1949) Each regularly assigned train Dispatcher will be entitled and required to take two

intended at the time the said Agreement was negotiated. As shown by the correspondence cited in this Ex Parte Submission, the Employees have clearly expressed the fact that they did not intend 4-C-1 to require payment under the present facts. The correspondence also shows that the Carrier never intended 4-C-1 to apply as the Employees are now contending. It is respectfully suggested that if the Board applies the above principles to the instant case the only possible result and the only correct result is a denial of the claim.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that Regulation 4-C-1 of the applicable Agreement, upon which the Employees here rely, has no application to attendance by Train Dispatchers at Book of Rules classes, and that the Claimants are not entitled to the compensation which they claim.

It is respectfully submitted, therefore, that the claim in the instant case should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

Oral hearing is desired.

All data contained herein have been presented to the Employees involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Here claims are presented in behalf of named Train Dispatchers for compensation at the punitive rate, for the days indicated account of being required by Respondent to attend classes on Book of Rules and Special Instruction, since said days were rest days assigned to their respective positions. Rule 4-C-1 is made the basis of the claim.

Each of the individual Claimants were on the date in question on a rest day of their respective positions. It is asserted that in notifying them to attend classes on the Book of Rules and Special Instructions the Respondent was in fact demanding that they perform "Service" on their assigned rest days; and further, that since their abilities or qualifications were not questioned, compulsory attendance at the Classes must have been service for the Carrier's benefit and thus compensable as requested.

Respondent counters that there is No Rule in the effective Agreement that will support this Claim; and that if (the Carrier) is free to require by Operating Rule that any employe be required to show his competence to remain in service. It was further pointed out that Laws of the State of Indiana require an examination of all Employes of this craft at two year intervals and that in this instance class attendance was credited as a re-examination in compliance therewith.

However advisable or justified a Rule providing payment for time spent, as here; we are unable to find that attendance at the Classes in question was either "work" or "service" within the meaning of the effective agreement. This Board has consistently held in its awards, the latest being Award 7577, that claims of the type here present are without merit.

Suffice to say this Board has no right to promulgate new rules; its authority is limited to the interpretation of existing rules.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

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.