

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WABASH RAILROAD COMPANY

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

(a) The Wabash Railroad Company, hereinafter referred to as "the Carrier," acted contrary to the wording and intent of the rules of the Schedule Agreement between the parties, particularly Section (a) of Article 3, effective September 1, 1949, when on June 17, 1955 it used Mr. C. S. Sorenson, regularly assigned train dispatcher to work the night chief train dispatcher position in its Peru, Indiana office, hours 9:00 P. M. to 6:00 A. M. on a rest day assigned to his regularly assigned position, at straight time rate of pay, and

(b) The Carrier shall now compensate Train Dispatcher C. S. Sorenson an amount representing the difference between what he was paid at straight-time rate of pay and what he would have received if he had been properly compensated at rate of time and one-half for service performed on Friday, June 17, 1955.

EMPLOYES' STATEMENT OF FACTS:

An agreement between the Wabash Railroad Company and the Train Dispatchers employed thereon represented by the American Train Dispatchers Association, effective May 1, 1946, and revisions thereof are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein. Said agreement will hereinafter be referred to as the "Agreement."

Pertinent rules of the Agreement read as follows:

"ARTICLE 1.

"(a)—Scope.

"This agreement shall govern the hours of service and working conditions of train dispatchers.

"The term 'train dispatcher' as herein used shall include all train dispatchers, except one Chief Train Dispatcher on each operating division which position shall not be subject to any of the provisions of this agreement."

different factual circumstances. See Award No. 4439, wherein this Board stated:

“***when a rule specifically lists the situations to which applicable it thereby excludes all those not included therein.”

It is the position of the Carrier that to include Mr. Sorenson as being entitled to time and one-half for service performed on the date in question under the provisions of Article 3(a) when not **required** to perform service, would be in violation of one of the well-established rules of contractual construction that, when clear and unequivocal, the terms of an agreement must be given their plain and ordinary meaning.

Inasmuch as the clear and unequivocal meaning of Article 3(a) is that time and one-half is only allowed when a regularly assigned train dispatcher is **required** to perform service on his rest day, the Carrier has by agreement only committed itself to provide payment at pro rata rate for the service performed by Mr. Sorenson in the instant case.

To grant the claim presented in favor of Train Dispatcher Sorenson for overtime rate in lieu of pro rata rate for service performed on the night in question would require this Board to disregard the agreement between the parties and impose upon the Carrier an obligation not agreed upon.

In view of all the foregoing, the claim presented on behalf of Train Dispatcher Sorenson should be denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

OPINION OF BOARD: There is no material dispute between the parties with respect to the essential facts in this case. Claim is made on behalf of Train Dispatcher C. S. Sorenson. It is contended that on claim date, June 17, 1955, when he worked on one of his two rest days he should, under the applicable rules of the Agreement, have been compensated at the rate of time and one-half instead of at the straight time rate.

It appears that on the date in question the regularly assigned night chief dispatcher wished to be off from work for personal reasons. Prior to this time the Carrier had denied his request. However, on the evening of claim date, shortly prior to the beginning of the trick Claimant Sorenson agreed to take the night chief dispatcher's trick, apparently at straight time rate of pay. This arrangement was agreed to by Carrier, and Claimant proceeded to work the trick in question for which he was compensated at the straight time rate. Petitioner contends that this form of payment was in violation of Article 3 (a) of the applicable schedule.

Cited Article 3 provides that “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.” Certainly there was an “unavoidable emergency” involved in the instant situation.

The arrangement whereby Claimant worked on his rest day at straight time rate was made between two individuals and concurred in by the Carrier's officer. It has long been held by awards of this Division and other tribunals that an individual and the carrier cannot make an agreement to vary the requirements of the contract unless a specific rule so provides or the real contracting parties so agree.

Once this individual agreement had been made, although unjustified under the applicable rules, Claimant was required to protect the service in question.

We think Article 3 taken as a whole, in relation to what occurred on this occasion, dictates that Sorenson should have been paid at the rate of time and one-half.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the contract.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.