

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

The Southern Pacific Company (hereinafter referred to as the "Carrier") be required to pay to Extra Train Dispatcher L. R. Poore money due him under Section (i), Article 2 of the currently effective Agreement between the parties to this dispute, when on December 3, 13, 17, and 31, 1955, Carrier required Claimant Poore to leave his regular position of telegrapher at Oil Junction and to perform train dispatcher service at Bakersfield.

EMPLOYEES' STATEMENT OF FACTS: There exists an Agreement between the parties to this dispute, effective April 1, 1947 (Reprinted July 1, 1955, including revisions) on file with your Honorable Board and by this reference is made a part of this submission as though it were fully set out herein.

Agreement provisions upon which this claim is based are contained in Article 2, Section (i) and Article 5, Sections (a) and (b). The pertinent portions thereof are quoted below for ready reference.

"ARTICLE 2.

"Section (i). TRAVEL TIME * * * * *.

"An extra train dispatcher engaged in other service who is required by the Company to travel from a point where he is engaged to perform service as a train dispatcher, shall be paid for actual time traveling in going to train dispatching position, calculated from the actual time of departure to time of arrival, at the straight time rate of trick train dispatcher, with a minimum of four (4) hours and a maximum of eight (8) hours during the period of twenty-four (24) hours from time of departure while so traveling. No travel time will be paid for in returning from train dispatching service to other service, except that if the employe cannot return in

the date of the final decision from which appeal is taken. **The decision of the general officer to whom the appeal is taken shall be final and binding, unless within sixty (60) days after written notice of such decision such officer is notified in writing that his decision is not accepted.**" (Emphasis supplied)

While Oil Jct. happens to be two miles outside the city limits of Bakersfield, the principle in the instant case is exactly the same as in the case cited above in that petitioner was not required to do any traveling in reporting for train dispatcher service, but merely reported for duty at a different place within the same terminal.

The petitioner in this case is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed by the parties. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule where none exists.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filled ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant was filling a regular position as Telegrapher at Oil Junction, California. He was also the senior Extra Train Dispatcher. Pursuant to Carrier's orders, he was assigned and reported directly to Bakersfield, California to perform work as a Dispatcher on December 3, 13, 17 and 31, 1955. This Dispatcher assignment was proper.

The distances between Oil Junction and Bakersfield are 4.3 miles by rail and 5.3 miles by highway. Oil Junction is outside the corporate limits of Bakersfield but both are within the same terminal.

The record does not disclose where the Claimant makes his home.

Discussion

The claim is based upon the following part of Article 2, Section (i):

"An extra train dispatcher engaged in other service who is required by the Company to travel from the point where he is engaged to perform service as a train dispatcher, shall be paid for

actual time traveling in going to train dispatching position, calculated from the actual time of departure to time of arrival, at the straight time rate of trick train dispatcher, with a minimum of four (4) hours and a maximum of eight (8) hours during the period of twenty-four (24) hours from time of departure while so traveling. No travel time will be paid for in returning from train dispatching service to other service, except that if the employe cannot return in time to perform service without loss of one or more day's pay on his regular position after being released as a train dispatcher, he shall be compensated not to exceed one (1) day's pay at trick train dispatcher's rate."

The Claimant contends that the Board must apply the provision literally and that literally it sustains the claim for the minimum for "travel from the point where he is engaged to perform service as a train dispatcher."

In support of this position Award 3530 (Carter) is cited. The entire "Opinion of the Board" states:

"Claimants were assigned to positions at Burbank Junction Tower and were required to go to Burbank Station to receive their pay checks. The distance between the two points is .5 of a mile. Claim for two hours' pay at the pro rata rate is made for each trip thus required to be made. The Organization relies upon Rules 35 and 41, current Agreement. The rules provide:

'Telegraphers required by the Company to leave their stations to go to other points to receive their pay checks will be paid for time consumed at pro rata hourly rate with minimum of two hours.' (Rule 35, current Agreement.)

'Location of telegraphers for service will be considered as "stations" within the meaning of this agreement.' Rule 41, current Agreement.

"Clearly, the Claimants are entitled to pay for their time in being required to go to Burbank Station for their pay checks, with a minimum allowance of two hours for each trip. The fact that the stations are in the same yard or city is not a controlling factor within the meaning of the quoted rules. The language of these two rules is plain and unambiguous. If the parties had meant that it did not apply to stations within the same yard or city it would have been a simple matter to have said so. The language being clear and definite as to its meaning, we are obliged to enforce it as made."

The situations are different in one major and significant respect: in the earlier case the Claimants did "leave their stations to go to other points," while here the Claimant merely reported at Bakersfield rather than reporting at Oil Junction. Literally, he did not travel "from the point where he [was] engaged." We believe that the literal language of the Agreement does not sustain the claim.

Nor does the ordinary meaning of "travel" fit reporting for Dispatcher work in the same vicinity where the other work is normally performed. For all that the record shows Claimant's home may have been closer to the Bakersfield assignment than his Oil Junction location. In any event, he was doing no more than going to work from his home in the same locality. We need not

determine here how short a trip would give rise to the right to the travel minimum pay. A reasonable and sensible application of the rule should not be difficult.

All we decide here is that the Claimant did not meet the requirements of the Rule when read literally or with its ordinary and usual meaning.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.