

Award No. 9839

Docket No. TD-9738

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

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

(a) The New York Central Railroad, hereinafter referred to as "the Carrier" violated the current effective agreement between the parties to this dispute, particularly Article 8, Section (f), when it failed and refused to compensate Train Dispatcher A. F. Giuliani of its Chicago, Illinois train dispatching office in accordance with the provisions of Article 3, and Article 8, Section (f), when Train Dispatcher Giuliani reported and served as witness for the Carrier at a hearing or investigation on instructions from proper company representative on Thursday, April 5, 1956.

(b) The Carrier shall now compensate Train Dispatcher A. F. Giuliani four (4) hours pay at pro rata rate for Thursday, April 5, 1956.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, effective April 1, 1944 with amendments to December 1, 1954, 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.

Article 2, Sections (a), (b) and (c), Article 3, Sections (a), (b) and (c) and Article 8, Section (f) which are particularly pertinent to the instant claim are quoted here for ready reference.

"ARTICLE 2

"(a) HOURS OF SERVICE

"Eight consecutive hours shall constitute a day for train dispatchers. **EXCEPTION:** Where practices existed immediately prior to the adoption of this section, assistant chief dispatchers may

with the length of the work day. We believe the National Mediation Board's Interpretation is very much in point.

The Claimant seeks a construction of Rule 6(c) which would, in effect, fix the end of the assigned tour of duty as the end of the work day, at least with respect to the last assigned work day before the first assigned rest day. With this, we cannot agree.

We find that Claimant did not perform the service in question on an assigned rest day. His Monday assigned work day began Monday at 10:30 PM and ended Tuesday at 10:30 PM, at which time his Tuesday rest day commenced.

We are of the opinion that the Claimant was compensated in accordance with the terms of the Agreement and that the claim should be denied."

It will be noted that the Claimant Yardmaster involved in the dispute on the Terminal Railroad Association of St. Louis was a regularly assigned Yardmaster. His assigned duty hours were 10:30 P. M. to 6:30 A. M. His assigned rest days were Tuesday and Wednesday. On both days the Yardmaster was relieved from duty at 6:30 A. M. Tuesday, and on the same day, from 8:00 A. M. to 9:00 A. M. was required to attend an investigation.

It is significant that in the Referee hearing on Fourth Division Award 1173, President Springer of the American Train Dispatchers' Association appeared as a representative of the Yardmasters' Organization inasmuch as the rule in dispute in that Award was the outgrowth of the rule the Train Dispatchers obtained in the 1942 Mediation Agreement. The Yardmasters' claim having been denied in Award 1173, it must be assumed the Referee did not support President Springer's interpretation of the rule.

The situation dealt with in the above Award is identical with that on this Carrier. The principle recognized by the above Award, when evaluated with circumstances of claims similar to the one in the instant docket, clearly shows that the claim is without substance.

CONCLUSION: The Carrier has shown that the first paragraph of Article 8 (f) and Interpretation by the National Mediation Board issued January 31, 1947 support its position. The principle recognized in Fourth Division N.R.A.B. Award No. 1173, which denied a comparable claim, is similarly applicable to the instant claim. The claim should be denied.

All evidence and data set forth in this submission have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant, a train dispatcher, was ordered to attend a hearing as a witness at 8:30 A. M. April 5, 1956. His tour of duty ran from 11:30 P. M. Wednesday, April 4, to 7:30 A. M. Thursday, April 5. He then attended the hearing which concluded about 9:30 A. M. He asks for compensation therefor. The Company allowed and paid him for two hours at the pro rata rate. He claims it should be four, that is two more because this took place on his "Rest day". Each week his rest days are Thursday and Friday.

The Agreement provides Article 3, paragraph (a) for two rest days a week; that in paragraph (c) it states that not less than seventy-two hours "shall elapse between the time required to report on the day preceding the rest day or days and the time required to report following the rest day or days". Article 8, paragraph (f) allows for attending a hearing "not less than employe would have earned on his assignment" which means actual time engaged if on an assigned work day, but on "rest days" the amount would be four hours *pro rata* rate as a minimum and if the service took more than four hours then there would be one day's pay at the *pro rata* rate.

The answer to the question as to whether Claimant should be paid two hours only (as Carrier contends) or four hours, as Claimant contends, is whether the time between 8:30 and 9:30 A. M. Thursday, April 5 was served on an ordinary work day or on a rest day.

Article 3 with reference to rest days obviously applies. The duration of Claimant's rest period as there given would begin on Thursday at 11:30 P. M. and continue until Saturday at the same time. As his claimed service ended at 9:30 A. M. nearly fourteen hours before, it must have been on an ordinary work day, not a rest day.

Award 1173 (Nahstoll), Fourth Division embraces virtually the same set of facts as we have here and the Board said it could not agree with the Claimant's construction which would in effect "fix the end of the assigned tour of duty as the end of the work day", and held that he "did not perform the service in question "on an assigned rest day", because his work day "began Monday at 10:30 P. M. and ended Tuesday at 10:30 P. M., at which time his Tuesday rest day commenced".

In Award 737 (Carter), Fourth Division, a Yardmaster was required to appear at a meeting at the Trainmaster's office on October 4, 1950, a Wednesday. This he did after finishing his tour of duty which ran from 11:00 P. M. the night before until 7:00 A. M. He claimed pay for one day at time and a half for being required to attend the meeting on his rest day. The Board said, "the claim must fail because claimant was not working on his rest day * * * Claimant's work day begins at the commencement of his assigned tour of duty (11:00) P. M. and ends 24 hours subsequent thereto. Consequently Claimant's assignment commencing Tuesday, October 3, 1950, at 11:00 P. M. was the beginning of his Tuesday assigned work day which ended at 11:00 P. M. Wednesday, October 4, 1950. * * * the time claimed was not therefore on Claimant's rest day." See also Award 1485 (Carter), Second Division.

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 Employe involved in this dispute are respectively Carrier and Employe 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 by Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1961.