

Award No. 10641
Docket No. TD-10998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

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

(a) The New York Central Railroad (P&LE District) hereinafter referred to as "the Carrier" violated the currently effective Agreement between the parties to this dispute, particularly Article 2(b) when it failed and refused to compensate Train Dispatcher C. J. Lukenas for time worked in excess of eight (8) hours in its Pittsburgh, Pennsylvania train dispatching office on Friday, June 6, 1958.

(b) Carrier shall now compensate Train Dispatcher C. J. Lukenas for twenty-five (25) minutes of service performed on Friday, June 6, 1958 at the rate of time and one-half as provided in Article 2(b).

EMPLOYES' STATEMENT OF FACTS: There is in an Agreement between the New York Central Railroad (including the following Districts) New York Central, Buffalo and East, New York Central, West of Buffalo, Grand Central Terminal, Boston and Albany, Cleveland, Cincinnati, Chicago & St. Louis, (including Peoria and Eastern), The Indianapolis Terminal, The Indiana Harbor Belt Railroad, The Pittsburgh and Lake Erie Railroad and Train Dispatchers represented by the American Train Dispatchers Association, 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, which is particularly pertinent to this dispute, is 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 continue to be assigned to not more than nine hours a day, including a meal period where previously allowed.

it cannot be said that the rule is so clear and definite that the practical construction placed upon it by the parties as evidenced by long years of practice thereunder was contrary to the clear language thereof. * * *

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"Furthermore the application of the rule over the years on the property is the best evidence of what the parties intended the rules to mean, when such rules are not clear and concise. The record alleges that past methods of operations have interpreted the rules in the above manner. * * *

4. CLAIMANT DID NOT PERFORM SERVICE FOR 25 MINUTES BEYOND HIS ASSIGNMENT.

Without waiving its position that the claim of Dispatcher Lukenas is without merit, the carrier here submits that should the Board decide in his favor, the claimant would only be entitled to 14 minutes, not the 25 minutes claimed. Train Dispatcher Lukenas worked a third trick dispatching assignment, 10:45 P. M. to 6:45 A. M., and was relieved by first trick Train Dispatcher Hawthorne at 6:34 A. M. (11 minutes prior to the scheduled relieving time). Due to the fact that the records, necessary to make the transfer to the relieving Dispatcher, were incomplete, it was necessary for the claimant to remain and properly complete his transfer. Dispatcher Lukenas completed his memorandum covering the rule violations which had occurred during his tour of duty at 6:59 A. M.

The 25 minutes claimed represents the difference between the time the claimant was relieved by Train Dispatcher Hawthorne at 6:34 A. M. and the time he completed his transfer at 6:59 A. M. However, as stated above, the regularly assigned hours of the assignment which the claimant filled on the date in question were 10:45 P. M. to 6:45 A. M., not 6:34 A. M. The time spent by the claimant in completing his transfer, beyond his eight hour tour of duty, was not 25 minutes as claimed, but a period of only 14 minutes, from 6:45 A. M. to 6:59 A. M.

CONCLUSION: The carrier has shown that the time required of Dispatcher Lukenas was spent in completing the transfer of information concerning incidents which had occurred during his tour of duty and did not involve any other phase of train dispatcher work after the completion of his tour of duty. As such, this time was specifically excluded from any payment of additional compensation by the terms of the Dispatchers' Agreement.

Further, the carrier has shown that the application of the rules cited in this submission has remained constant throughout the life of these rules and that such application has not been questioned until now.

The carrier respectfully submits that the claim of Dispatcher Lukenas is completely devoid of merit and earnestly requests that same be denied.

All data submitted in support of carrier's position has been presented to the authorized representatives of the employe and we believe they are fully aware of our position as herein set forth.

OPINION OF BOARD: There is little dispute concerning the facts herein between the parties relative to this matter. Claimant, C. J. Lukenas,

was an extra dispatcher who worked the third trick position at Pittsburgh, June 5, 1958, having assigned hours from 10:45 P. M. to 6:45 A. M. At approximately 6:19 A. M. June 6, 1958, through no fault of Claimant, certain employees violated Carrier's operating rules in mishandling of a train order and a train movement, pursuant to train order No. 101 issued by claimant. The latter was in no manner involved nor was he aware of such violation until after it occurred.

Claimant was relieved by Train Dispatcher Hawthorne, who had reported and signed the Register and taken over the duties of said position at 6:34 A. M. Prior to this Claimant had turned over to Dispatcher Hawthorne all information necessary to permit him, as relieving dispatcher, to fully and completely begin dispatcher service. There is nothing in the Record to indicate that the fact of the violation of Train Order 101, had not been transmitted to Dispatcher Hawthorne before 6:34 A. M. nor is there anything in the Record to indicate there was any further problem concerning this, confronting the relieving Dispatcher.

At 6:34 A. M. June 6, 1958, at the time Claimant was relieved by Dispatcher Hawthorne he was instructed by Chief Train Dispatcher P. R. Funkhouser to give him a memorandum concerning the violation of operating rules of train order No. 101. This, Carrier contends, was in accordance with the Operating Rules, particularly General Rule E and Special Rule 808 applying to Train Dispatchers. Claimant complied with said instruction and completed said report at 6:59 A. M. and makes this claim for twenty-five minutes overtime, at overtime rates.

The pertinent Rules which are involved here are as follows:

"Operating Rules of Carrier

"General Rule E. Employees must render every assistance in their power in carrying out the rules and special instructions and must report promptly to the proper official any violation thereof."

"Special Rule 808, applying to Train Dispatchers

"808. They must, when being relieved, make ink written transfer in their train order books, of all outstanding and unfulfilled train orders, and of all information which the relieving dispatcher should know.

* * * * *

"ARTICLE 2

"(a) Hours of Service (3-1-1945)

"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 continue to be assigned to not more than nine hours a day, including a meal period where previously allowed.

"(b) Overtime (3-1-1945)

"Time worked in excess of eight hours on any day, exclusive of time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.

EXCEPTION: This rule shall not apply to assistant chief dispatchers' positions for which exception is made in Article 2(a) until after the assigned spread of the day's assignment.

“(c) Transfer Time (4-1-1942)

“The term ‘time required to make transfer,’ as used in Section (b) above, includes the time it is necessary for the train dispatcher who is being relieved to turn over to the relieving train dispatcher the information necessary to permit the relieving train dispatcher to fully and completely begin dispatcher service on the trick to which he is assigned. A train dispatcher who is required to remain in charge during the time transfer is being made will not be considered as having accrued overtime. Except to extent provided herein with respect to transfer time, a train dispatcher required to remain on duty after the expiration of his tour of duty will be paid for such time as overtime.

* * * * *

“(e) Service in Advance of Regular Work Period (4-1-1944)

“All service in advance of and continuous with the regular working hours shall be paid for at time and one-half rate on the actual minute basis.”

It is Claimant's position that he had completed his assignment on the day in question: that he had turned over all information necessary to permit his relief Dispatcher Hawthorne to fully and completely begin dispatcher service at 6:34 A. M. and that Hawthorne had signed the Register and had actually taken over and assumed said duties at said time and that he was then relieved of further duties. That the report he was requested to make by the Chief Train Dispatcher, pursuant to said special Operating Rule 808, was for the benefit of the Carrier and did not come within the purview of transfer time as defined in Article 2(c) of the Agreement and that performing these services after he had been relieved of his duties, he is entitled to payment of overtime therefor.

Carrier contends that Claimant had a duty to make a full and completely detailed report of the violation of Train Order #1 so that his Relief Dispatcher could complete his assignment and that Claimant had an obligation to fulfill this duty before his assignment could be considered complete, in accordance with Rule 2(c) of the Agreement. Carrier further contends that Claimant was paid for the scheduled hours of his assignment, viz., for the eight-hour period from 10:45 P. M. to 6:45 A. M. and that but 14 minutes could be involved in his completing the report.

There is no question but that Carrier was within its right in requesting a report of the incident concerning the violation by others of Claimant's train order No. 101. The real question, as we see it, is whether or not this would come within the transfer time defined in Article 2(c). It is our opinion that it does not. (Award 1212, Fourth Division)

Thus it is our opinion that Claimant is entitled to be paid overtime and the next question is the amount of time involved. We are of the opinion that if Carrier had made a timely request for said report and it had been possible for Claimant to have furnished it within the hours of his tour of duty, no

claim for overtime could be considered. In our opinion, Claimant is entitled to overtime pay for the fourteen minutes between 6:45 A. M. and 6:59 A. M. on June 6, 1958.

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 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 Agreement was violated.

AWARD

Claim sustained to extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1962.