

Award No. 16266
Docket No. TD-16918

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE LACKAWANNA RAILROAD COMPANY

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

(a) The Erie Lackawanna Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Article 2(b) thereof in particular, but its failure to properly compensate Train Dispatcher F. A. Bookstaver for services performed on October 14, 1965.

(b) The Carrier now be required to additionally compensate Train Dispatcher F. A. Bookstaver for three (3) hours' compensation at time and one-half rate of Assistant Chief Dispatcher.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated as part of this submission as though fully set out.

For ready reference, Articles 2(a) and (b), both of which are material here, are quoted in full:

"(a) Eight (8) consecutive hours' work shall constitute a day.

(b) (Mediation Agreement March 14, 1942) Effective April 1, 1942, time worked in excess of eight (8) hours on any, exclusive of the 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.

INTERPRETATION

In the absence of any concrete evidence that there was an understanding during mediation, to the effect that the words 'on any day' mean 'tour of duty', the Board finds that the phrase 'on any day' as used in paragraph 2 (a) of the mediation agreement of March 14, 1942, has the same meaning that has been given it in many awards made by the Third Division of the National Railroad Adjustment Board, and which is generally accepted on the Car-

wick Drill on October 4, 1965. Copy of the investigation attached as Carrier Exhibit A. Principals present at the investigation were:

A. C. Scott - Representative, BofLE
Frank Dillon - Engineer
R. E. Fahey - Representative, BofLE
F. A. Bookstaver - Train Dispatcher
Howard Oakley - Office Chairman, ATDA
A. Persoon - Conductor
J. R. Sampson - Representative, BofRT
W. B. Wagner - Trainmaster
M. H. Rozelsky - Trainmaster
J. J. McBride - Stenographer

Claimant Bookstaver lost no time from his regular assignment which worked 4:30 P.M. to 12:30 A.M. when he attended the investigation from 12:30 P.M. to 2:05 P.M., on October 14, 1965, but on the same date submitted a claim for payment of three (3) hours at time and one-half. His initial claim was denied by the Chief Train Dispatcher on November 11, 1965. Claim was appealed to the Superintendent by ATDA Office Chairman on December 4, 1965 (Exhibit B), alleging violation of the overtime rule, Article 2(b). Claim was denied by the Superintendent on December 8, 1965 (Exhibit C). Under date of December 11, 1965, the Office Chairman of the ATDA rejected the Superintendent's decision (Exhibit D); on December 20, 1965 (Exhibit E) claim was appealed to Carrier's highest officer designated to handle such disputes, who denied the appeal on January 5, 1966 (Exhibit F). Conference was held on January 17, 1966 and decision reaffirmed, with confirming letter furnished on January 21, 1966 (Exhibit G). Under date of January 29, 1966, the General Chairman advised that Carrier's decision was unacceptable, and would be appealed. (Exhibit H)

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case alleges a violation of Article 2(b) of the basic Agreement, in that Carrier required him to attend an official investigation on October 14, 1965 for a period of three hours, a day in which he performed his regularly assigned duties for a period of eight hours. The claim is for the three hours at time and a half. Article 2(b), upon which the claim is based, reads as follows:

"ARTICLE 2. OVERTIME

(b) (Mediation Agreement March 14, 1942) Effective April 1, 1942, time worked in excess of eight (8) hours on any day, exclusive of the 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."

The Organization, on behalf of Claimant, argues that although the Agreement before us does not contain a special rule providing specifically for compensation to employees attending investigations, Court hearings, etc., a special rule incidentally which many Agreements do contain, nevertheless the general rule above cited does support its position.

The Carrier, on the other hand, contends that the aforecited Article 2(b) was never intended to include within its purview compensation for attendance at investigations, etc., that attending such investigation was not considered "work" as contemplated by the Agreement and that the history and practice on this property has been contrary to the argument propounded by the Organization.

The essential question presented for resolution, simply and concisely stated is as follows: Did Claimant's attendance at the investigation, which was required by the Carrier, constitute "time worked" as those terms are used in Article 2(b)? If the answer is to be in the affirmative, we must have sound evidence presented to us to show conclusively that this was in the contemplation of the parties when the Agreement was written, as evidenced by the conduct of the parties over a protracted period of time, parties who were signatories to the Agreement. The Organization has not presented a sufficient body of evidence to sustain their position in this regard, and since the burden of proof rests squarely on its shoulders, we must deny this claim. This question has been decided in favor of the Organization in many instances, but reliance in those cases was either based on past practice or a special rule covering the instant circumstances.

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 30th day of April 1968.