



Award No. 17138

Docket No. TD-17852

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

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

(a) The Atlantic Coast Line Railroad Company (now Seaboard Coast Line Railroad Company), hereinafter "the Carrier" violated the then effective Agreement between the parties, Article 2(a), 2(e) and 3(b) thereof in particular, by its failure to properly compensate Train Dispatcher D. Oelslager for service performed on June 7, 1966, one of his assigned weekly rest days, and for service performed in advance of his regularly assigned hours of duty on June 10, 1966.

(b) The Carrier shall now be required to compensate Claimant Oelslager one day's compensation at time and one-half rate applicable to trick train dispatcher for June 7, 1966, and three hours at time and one-half rate applicable to trick train dispatcher for service performed in advance of Claimant's assigned hours on June 10, 1966.

EMPLOYES' STATEMENT OF FACTS: At the time here in question an Agreement was in effect between the Atlantic Coast Line Railroad Company (now part of the Seaboard Coast Line Railroad Company) and the Claimant Organization. A copy of that Agreement should be on file with this Board and by this reference the same is incorporated into and as a part of this submission as though fully set out.

(Note: Pursuant to authority granted by the Interstate Commerce Commission, the former Seaboard Air Line Railroad and the former Atlantic Coast Line Railroad and the former Atlantic Coast Line Railroad were merged into and become the Seaboard Coast Line Railroad Company, effective on or about July 1, 1967. The schedule agreement negotiated by the parties and applicable to the merged Carrier, patterned after and in much the same terms as that applicable to the former Seaboard Air Line Railroad Company, is not involved in this dispute.)

For the Board's ready reference Articles 2(a), 2(e) and 3(b) of the Agreement between the parties and applicable to the former Atlantic Coast Line Railroad Company, and which was in effect at the time here involved are quoted:

"(b) A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

* * *

There having been no violation of the Agreement, the claim for punitive payments to Mr. Oelslager on June 7 and 10, 1966, was at all times declined on all levels of appeal on the property.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant appeared on two days of June, 1966, at the disciplinary investigation of a fellow employee. One was a rest day; the other a regular work day. He asks compensation for services performed on these days.

The dispute is not whether he appeared, or whether he appeared as a witness for the Organization, or whether his testimony was material, or whether the Carrier, in its judgment, needed or was required to call him. It is rather a question of whether he devoted his otherwise free time to a service of the Carrier because of direction to do so by a proper representative of the Carrier.

It is undisputed that the presence of the Claimant at the investigation in question was desired by the employee. The Organization made its request of the Claimant to appear, and it was declined. The Chief Dispatcher was then asked to instruct the Claimant to appear. And it is clear that the Chief Dispatcher—the representative of Carrier who had full authority to require service of Claimant—instructed him to attend the investigation.

The record shows that the Chief Dispatcher followed the insistence of the Organization, but we find no reason why he should necessarily have done so, and must conclude that it was an exercise of his choice as a supervisor.

When he so exercised his authority—as he might in having Claimant work an extra period at his regular job—he obligated the Carrier for compensation to the Claimant.

On June 7 Claimant appeared at 9:30 A.M. at the designated place and remained there until 10:05 A.M. For this period of 35 minutes, under Rule 3(b), he shall be compensated at the time and one-half rate.

On June 10, Claimant reported at 9:30 A.M. and remained at the designated place until he was dismissed at 12:40 P.M. Under Rule 2 (b), he shall be compensated at the rate of time and one-half on the minute basis.

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 violated.

A W A R D

Claim sustained to the extent provided in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.