



Award No. 17252

Docket No. TD-17774

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
NORFOLK AND WESTERN RAILWAY COMPANY
(Involving employees on lines formerly operated by the
Wabash Railroad Company)**

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

- (a) The Norfolk and Western Railway Company, Western Region, (formerly Wabash Railroad Company, and hereinafter referred to as "the Carrier"), violated the existing Agreement between the parties, Article 3 (a) thereof in particular, by its action in declining to compensate Train Dispatcher T. G. Ballew for service performed on November 7, 1967, one of the weekly rest days assigned to the individual claimant's position.
- (b) The Carrier be required to compensate Claimant Ballew one day's compensation at the time and one-half daily rate of his position applicable to service performed on an assigned weekly rest day.

EMPLOYES' 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 a part hereof as though fully set out.

No question is involved with respect to the applicability of the said Agreement and the following history is recounted as information to the Board.

The Agreement was entered into between the Wabash Railroad Company and the American Train Dispatchers Association, effective March 1, 1957. It has since been amended from time to time but not with respect to the rules here involved.

The facilities of the Wabash Railroad Company were merged into and became a part of the Norfolk and Western Railway Company, effective October 16, 1964, and now comprise the Western Region of the last named Carrier.

The said merger was authorized by the Interstate Commerce Commission in its Finance Dockets 12510 et al. In connection therewith, on April 16, 1962, certain organizations, including that here before the Board, entered into an agreement with Norfolk and Western which, among other terms,

OPINION OF BOARD: Claimant attended a meeting of the Better Service Conference on a rest day and believes he should be compensated at the time-and-one-half rate for service performed.

The Claimant and others were "selected" by the Carrier to serve on a regional conference, told that there would be four meetings and given tentative schedule for each. The Carrier's letters said:

"We are a little late in getting our committee set up and would appreciate an early reply as to whether you will be willing to serve as a delegate to this Conference. It is hoped that you will all see fit to serve, as it is a very important committee, and you can help us gain a lot from your knowledge and past experience." (Emphasis ours)

Claimant returned the letter after writing across it:

"Yes, I will serve on the Committee."

Claimant had received an invitation to serve, he exercised his free option to accept when he might have declined without penalty.

We further conclude from study of the record that Claimant was verbally advised that he would receive payment for any time lost if a meeting was held on a work day of his work week, but not if the meeting was held on a rest day.

On October 9, 1967, Claimant received a notice that the Conference would meet at 9:30 A.M. on November 7, a Tuesday and Claimant's rest day.

The Superintendent wrote:

"Please arrange to be present at this Conference. Advise me promptly if you will attend."

Claimant again returned the Carrier's letter after writing:

"I will be present at the above meeting."

It is argued in behalf of the Claimant that he performed services for the Carrier by attending the Conference; that he supplied knowledge and information for which the Carrier might have compensated another source. While this may be true, we are compelled by the instant circumstances to agree with the Carrier and conclude that this Claimant was aware of all the circumstances when he voluntarily accepted the Conference appointment.

He might have declined because of the plan for time-lost compensation, but after agreeing and volunteering to serve he can not now expect this Board to uphold his claim contrary to his initial arrangement.

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 respec-

tively 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.