

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19257
Docket Number TD-19187

Clement P. Cull, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Inc.
(Formerly Spokane, Portland and Seattle Railway Company)

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

(a) The Spokane, Portland and Seattle Railway Company (now part of Burlington Northern, Inc.), hereinafter referred to as "the Carrier" violated the existing schedule Agreement between the Carrier and the American Train Dispatchers Association, hereinafter referred to as "the Organization" Article 14 thereof in particular, when it failed and refused to properly compensate Dispatcher R. C. Sheuerman for attendance as Company witness at a joint formal investigation with the Union Pacific Railway Company and the Carrier at The Dalles, Oregon on October 17, 1969.

(b) The Carrier shall now properly compensate Dispatcher R. C. Sheuerman the difference between what it has paid and the proper compensation due.

OPINION OF BOARD: The herein case involves an interpretation of "Article 14-Court Service-Witnesses", of the agreement between the parties. The Article is reproduced here for convenience, in relevant part.

"(a) Train dispatchers taken away from their regular assigned duties, on instructions of the Company, to attend court, inquest or to appear as witnesses for the Company at any investigation or hearing shall be furnished transportation and shall be allowed compensation they would have earned had such interruption not taken place.

(b) Train dispatchers who work their assignments for the day and are instructed by the Company to attend court, inquest, investigation or hearing as witnesses for the Company, outside of their regular assigned hours, shall be compensated at the straight time rate for actual time in attendance; computed from the time specified to report until released, with a minimum allowance of two hours, except that, if such attendance is required within one hour of the train dispatcher's regular starting time or within one hour of the time released from duty, such train dispatcher shall be compensated as if on continuous time at the straight time rate. The maximum allowance on any day under

"the provisions of this article shall be eight hours at the straight time rate of pay in addition to compensation for service performed on his assignment.

(c) Provided no train dispatcher service is performed, train dispatchers (not engaged in other service) on vacation, leave of absence, or rest day, also extra dispatchers (not engaged in other service), shall be allowed eight (8) hours pay at trick train dispatchers straight time rate for each day used, held or traveling or any combination thereof for purposes stated in paragraph (a). When train dispatcher service is performed on such day used, held or traveling, or when train dispatcher service is available to such train dispatcher, payment shall be made under paragraph (b).

(d) Train"

There is no dispute as to the factual situation giving rise to the Claim. Thus on October 17, 1969 Claimant, whose hours of work on that day were from 4:00 P.M. to 12:00 Midnight, was instructed to report at 7:45 A.M. to accompany the Assistant Superintendent to The Dalles, Oregon where Claimant was to appear as a witness at an investigation. The transportation was provided by the Assistant Superintendent and Claimant returned to Portland, Oregon; about 90 miles from The Dalles, at 7:45 P.M. Claimant was held out of service by Carrier on the day in question.

Carrier provided relief for Claimant who, as stated above, returned to Portland hours after the start of his trick at 4:00 P.M. For the 13 hours involved Carrier compensated Claimant for 8 hours at the pro rata rate on the basis of its interpretation of Article 14(a). Carrier contends that 14(a) is the only part of the clause which is material herein as Claimant was taken away from his regular assigned duties and he was therefore compensated for the time lost, 8 hours. Carrier contends that neither (b) or (c) of the Article is relevant as in the former he did not work his assignment and as to the latter he was not on vacation, leave of absence or on a rest day. Carrier contends that the word "such" appearing before the word "day" relates the entire last sentence of 14(c) to train dispatchers "on vacation", etc. and therefore that sentence has no application to the matter.

Petitioner on the other hand contends that 14(c) has relevancy here. It contends the words "when train dispatcher service is available to such dispatcher" requires payment under 14(b) of the Article. Thus the claim for 16 hours, which is comprised of the time at the hearing and the 8 hours lost from Claimants regular job when Carrier elected to provide relief.

The parties are in agreement that as Article 14 is a special rule it prevails over general rules.

In reaching our conclusion we will adhere to the general rules of contract construction. Thus we will give effect to all parts of the Article. We will also bear in mind the purpose of the Article and that when such an Article is susceptible of two possible interpretations we should attempt to give effect to the one which will not lead to an absurd result. We have closely scrutinized the Article in its entirety. We have carefully considered the arguments and the case citations of the parties.

Turning now to the Article we find, contrary to Carrier's contention, that 14(a) is not the controlling paragraph. We find instead that 14(c) does not deal solely with dispatchers "on vacation", etc. The following sentence:

"When train dispatcher service is performed on such day used, held or traveling, or when train dispatcher service is available to such train dispatcher, payment shall be made under paragraph (b)."

clearly indicates that the clause has reference to more than dispatchers "on vacation", etc. To hold otherwise would result in rendering the sentence to be a meaningless jumble of words serving no useful purpose in the Article. The parties intentions are best reflected by this holding as dispatchers "on vacation", etc. would hardly be available for service. Accordingly, we reject Carrier's argument that the word "such" relates the entire sentence to dispatchers "on vacation", etc.

This finding comports with the sense of the entire Article. In this connection 14(b) makes provisions for payments in addition to compensation earned at the performance of an employee's normal task plus the time spent as a witness. Article 14(c) provides for payments to dispatchers when service is available to such train dispatcher under Article 14(b). We find that the Claimant herein was available for "train dispatcher service" which he would have performed had he not been engaged in other Carrier business. Had Carrier returned him to Portland in time for him to start his trick he would have clearly been entitled to compensation for the time spent at the investigation plus his compensation for his normal task. Having made such finding payments become due under Article 14 (b). The restrictive interpretation made by Carrier does not give effect to the parties intention when, under the circumstances of the case, it limits its consideration of the claim to 14(a) solely.

The facts reveal that Claimant was on Carrier's business for 13 hours on the day in question or put another way Carrier availed itself of 13 hours of Claimant's time. Thus we find that under our construction of the Article, 8 hours at the pro rata rate is an improper payment. On the basis of that interpretation we are of the opinion that Claimant should be paid for the hours devoted to Carrier. The 13 hour claim was originally made by Claimant but was rejected by Carrier. We feel that the payment of 13 hours more nearly comports with the sense of the Article, which is not to enrich but to properly compensate an employee.

Thus while we will sustain the claim it will be for the difference between what was paid (8 hours) and 13 hours.

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 Employee involved in this dispute are respectively Carrier and Employee 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 as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellum
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.