

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20825
Docket Number TD-20544

Robert A. Franden, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Soo Line Railroad Company

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

(a) The Soo Line Railroad Company (hereinafter referred to as "the Carrier"), violated the Agreement between the Carrier and its train dispatchers represented by the American Train Dispatchers Association, effective March 20, 1961, Rule 4 (a) thereof in particular, when it refused to properly compensate Train Dispatcher W. O. Glaesemann (hereinafter referred to as "the Claimant"), for service performed on September 26, 1972, a regular assigned test day.

(b) The Carrier shall now compensate Claimant Train Dispatcher W. O. Glaesemann an additional six (6) hours punitive at second trick dispatcher's rate for September 26, 1972.

OPINION OF BOAW: On Claimant's rest day he attended an investigation as a witness for the Carrier. Claimant was paid for two (2) hours at the punitive rate for work performed on the day in question. There is no question but that in the instant case the attendance of a company witness at a company investigation is to be considered "work" or "service".

The issue in this case is how the Claimant is to be compensated. Carrier alleges that its payment of two hours at the punitive rate for the hour and fifty-five minutes worked was in compliance with the Agreement. The Organization alleges that Claimant is entitled to a full day's pay (8 hours) at the punitive rate.

The Organization bases its claim on rule 4 (a) and in particular the second paragraph of said rule.

"Rule 4 (a) 2nd paragraph - "Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days".

We find nothing in rule 4 (a) which requires the Carrier to pay Claimant for anything other than service actually performed.

The Claimant has argued that rule 21 has some bearing on this case. Rule 21 provides for compensation for those required to attend Court or inquest. An investigation such as that held in the instant case does not fall within the definition Court or inquest as contemplated by Rule 21.

The Carrier paid the Claimant in accordance with rule 3 "Calls".

"Rule 3 - (a) Subject to the provisions of Rule 4, a train dispatcher called for extra or relief service of less than eight (8) hours shall be compensated on the basis of three (3) hours for two (2) hours work or less, and if held on duty for more than two (2) hours will be compensated at pro rata rate for time worked in excess of two (2) hours; if used eight (8) hours or more will be compensated as provided in Rule 2.

(b) A train dispatcher required to report for duty before regular starting time and continuing to work through the regular shift, shall be paid three (3) hours for two (2) hours work or less, and time and one-half thereafter on the minute basis for time required to work in advance of the regular starting time.

(c) Assigned assistant and/or night chief dispatchers and trick train dispatchers who are directed by the management to perform service as trick train dispatcher outside of their regular assigned position will be compensated at the rate of time and one-half of the trick train dispatcher position filled. Penalty time under this agreement will not apply to employee who obtain new assignments through the exercise of seniority, until initial service performed on new assignment, or when directed to perform service as chief, assistant and/or night chief dispatcher."

The Carrier acted correctly and its actions were not violative of the Agreement.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this . 30th day of September 1975.