

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22181

Docket Number TD-21762

George S. Roukis, Referee

PARTIES TO DISPUTE: (*American Train Dispatchers Association*
(*Burlington Northern Inc.*

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association, on behalf of Claimant Train Dispatcher J. F. Sheuerman, for appropriate compensation on October 31-November 1, 1974 when required to leave his assign4-headquarters at Vancouver, Washington and travel to Chemult, Oregon (250 Miles distant) and return, to attend a formal investigation as follows:

(a) October 31, 1974: (Held from regular train dispatcher assignment, assigned hours 4:00 p.m. to 12 Midnight) left Vancouver at 6:00 p.m., traveled by auto to Bend, Oregon (approximately 190 tiles) and tied up there for the night.

1. Claim one day's pay at the pro-rata rate of regular assignment, per Article 24(e) of the Agreement.

(b) November 1, 1974: (Held from regular 4:00 p.m. to 12 Midnight train dispatcher assignment) Left Bend, Oregon at 8:00 a.m., by auto to, Chemult (approximately 60 tiles), attend formal investigation 10:00 a.m. to 1:00 p.m., then return home by auto, arrived at 8:00 p.m. Claim

1. one day's pay at pro-rata rate of regular assignment, per Article 24(e), and
2. time from 8:00 a.m. to 4:00 p.m., 8 hours at tire and one-half rate account called for service outside assigned hours, per Article 22 and Article 2(d).

(c) The Carrier shall now be required to compensate Claimant Train Dispatcher J. F. Sheuerman the difference between the compensation claimed in paragraphs (a) and (b) above and the amount actually paid Claimant for Octoer 31-November 1, 1974.

OPINION OF BOARD: Claimant was held from his regular train dispatchers assignment on October 31, 1974 and November 1, 1974 respectively to attend a formal investigation at Chemult, Oregon. His assigned hours are from 4:00 p.m. to 12:00 Midnight. He left his headquarter's station at Vancouver, Washington at 6:00 p.m. on October 31, 1974 and traveled by automobile to Bend, Oregon a distance of approximately 190 miles where he sojourned over night.

He left Bend, Oregon at 8:00 a.m. on November 1, 1974 and traveled to Chemult, Oregon to attend the formal investigation from 10:00 a.m. to 1:00 p.m. The Claimant then returned to his Vancouver post arriving there at 8:00 p.m. on that same date.

Claims (A)1 and (B)1 have already been resolved and the question now before the Board is whether Claimant is entitled to 8 hours at the time and one half rate account of his being called for service outside the assigned hours, pursuant to Articles 2(d) and 22. This reflects the two (2) hours spent in traveling from Bend to Chemult, the three (3) hours attending the investigation and the three (3) hours return travel from Chemult to Vancouver.

Article 2(d) states:

* * * * *

"that a regularly assigned train dispatcher called to perform service and reporting, outside the hours of his regular assignment shall be paid actual time for such service with a minimum of two (2) hours, at a rate of time and one half of the position for which he is called."

Article 20, specifies in pertinent part that:

* * * * *

"a train dispatcher held from service to attend court or inquest or other business on behalf of the Company, shall be paid, if an assigned dispatcher -- the daily rate of his assignment for each day so held."

Article 22, states, that:

* * * * *

"a train dispatcher required by the Company to travel from one point to another to perform dispatching service will be paid actual time traveling at train dispatcher's rate with a maximum of eight (8) hours for each twenty-four (24) hours or less enroute."

The pivotal issue before this Board is which of the asserted Articles is dispositive of the dispute?

The are **certainly aware** of the many contract construction rules eloquently analyzed in the record and will avoid a **comparative assessment** of their distinctions and directed applications. Instead, we will **examine** the specific fact situations herein within the **interpretative framework** of these articles and railroad precedent law.

Specifically, we must distinguish between being called to service on rest days to attend a court hearing or an investigation and being called for such type service on assigned work days. The Claimant was not called on his off time to attend this investigation on October 31, 1974 and November 1, 1974. He was instead, held from service on his regularly assigned work days and did not perform actual train dispatching functions during this time. He was, however, paid the daily rate of his assignment for these two (2) days, five (5) hours of which were spent in claimed travel and three (3) hours attending the investigation. He was also compensated for incurred travel expenses.

Article 2(d) addresses the performance of service outside the hours of the train dispatcher's regular assignment. Reporting to his work station to perform identical or related tasks both before or after his regularly assigned tour of duty or on his rest day would suffice as examples. So would attending court, inquest or, an investigative hearing on his rest day. But in this instant case, Claimant was not called on a rest day to attend this hearing, nor was he called to perform his regular train dispatcher services outside of his normally assigned hours. He was taken out of service on his regularly assigned work days, October 31 and November 1, 1974 to attend an investigation, consistent with the specifications and requirements of Article 20, Paragraph one (1).

His travel and attendance on those days were, in effect, equivalent assignments. This being our conclusion on this point, we must reject the Claimant's assertion of Article 2(d)'s applicability.

Correlatively, we will now review the relevancy of Article 22 to Claimant's request for travel time compensation.

This Article requires the Company to pay a train dispatcher required to travel from one point to another to perform dispatching services actual time traveling at the train dispatcher's rate, with a maximum allowance of eight (8) hours for each twenty four (24) hours or less en route. It appears to be a clear and unambiguous provision which if construed strictly on its plain language would be inapplicable to this claim. The Claimant did not perform, that is, traditionally defined, train dispatcher services at Chemult, Oregon. He attended an investigation.

The Agreement, moreover, does not define the distinction between "services" expressed in a general sense or "train dispatcher services" expressed in a **more** specific sense.

Analysis of Article 2(d) for instance indicates that service could mean attending an investigative hearing on a rest day or performing the functions inherent in dispatching trains on rest days or before or after the train dispatcher's regular assignment. it cannot mean attending a court, inquest or investigative hearing either before or after the train dispatchers normal assignment since the second (2nd) paragraph of Article 20 covers this kind of assignment.

This Board has held that attendance at legal proceedings, particularly on rest days is service or work within the meaning of the Agreement. See Award 16778. But it has not construed such attendance to mean literally dispatching trains. It was directed toward the Company's allocation of the train dispatchers off time in a non train dispatching capacity. The language of Article 22 uses the specific term, "train dispatcher's service" not the generalized word, "service." It focus is more precise. Similarly, unlike Article 2(d)'s adjudicatory history there is no discernible pattern of Third Divisioned case law on Article 22's intended construction or actual application. The Claimant has the burden of adducing proofs to substantiate his claimed assertions. He has not demonstrated that traveling to attend an investigation is synonymous with performing in fact actual train dispatching services within the definitional context of Article 22. For this reason we cannot sustain the claim.

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**s involved in this dispute are respectively Carrier and **Employee**s 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 Number 22181
Docket Number TD-21762

Page 5

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.

