# Award No. 1677
# Docket No. TD-1693

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Richard F. Mitchell, Referee**

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION

## DELAWARE & HUDSON RAILROAD CORPORATION

**STATEMENT OF CLAIM:** "Claim for time lost nineteen (19) working days during August, 1940, amount $189.43, for Train Dispatcher T. A. Boles, Carbondale Office."

**EMPLOYES' STATEMENT OF FACTS:** "Train Dispatcher Boles has been in the service of this carrier over twenty-five years.

"On the above dates it was necessary to relieve Dispatcher Boles due to illness. The Carrier's final decision in this case is attached hereto as Exhibit TD-4 and shows that they have declined to pay the claim.

"This claim is based on a letter from the Chairman, Board of Disciplining Officers, dated June 25, 1940 (TD-1), which letter notified the American Train Dispatchers Association that under certain conditions this Carrier had been allowing pay to its employes in dispatching service on sick leave and would continue to handle sick claims on the merits. The Carrier's letter of June 25, 1940 was the result of an Agreement between the parties during negotiations on the present Agreement, dated April 1, 1940. Employes' Exhibit TD-2 attached hereto, shows that the Carrier's letter was made a part of the present Agreement in effect between the parties on this property.

"The Carrier under date of May 26, 1941, declined to join in submitting the claim to your Honorable Board. We, therefore, submit it ex parte."

**POSITION OF EMPLOYES:** "The train dispatchers on the Delaware & Hudson Railroad became organized in 1939 and our first conference with the Carrier was on September 27, 1939, at which time we satisfied the Carrier of our right to represent these employes. The Committee presented a proposal for a working agreement which contained the following rule:

> 'Time lost account personal sickness shall be paid for up to a reasonable amount of time.'

"In subsequent conferences on the adoption of rules, the Carrier objected to putting into the agreement any rule providing for payment for time off sick. They admitted, however, that it had been the practice to pay the dispatchers while off sick, and the dispatchers said that the past practice had been satisfactory and asked that the Carrier give them assurance that past practice in this respect would be continued. The Carrier indicated that they intended to continue the past practice and asked if we would accept a letter in which it would be stated that the past practice was to be continued. We contended for a rule in the agreement but upon being given assurance that sick pay claims would be allowed, as in the past, we accepted, as a part of

"The above quoted letter was referred to by the Organization on the property in their claim for time lost by this train dispatcher in August, 1940. It is desired to call the Board's attention to the wording of this letter, as quoted, which, in our opinion, is clear and subject to no misunderstanding.

"As previously advised, under certain conditions we have allowed pay to employes in dispatching service on sick leave, such pay allowance being made when it could be granted without creating extra expense. As explained previously, prior to the date of our agreement with the American Train Dispatchers Association, we had considerably more leeway to grant such time, as it was less difficult to absorb the work without extra compensation. However, it is desired to state, for the Board's information that the Management is handling individual cases as they occur strictly in accordance with paragraph two of the letter above quoted. To bear this out, it is desired to call your attention to copy of grievance case No. 7.41 TD, attached hereto as Exhibit 'A.' Also, copies of forms which were passed authorizing payment for two other dispatchers when it was possible to make payment without increasing payroll cost. These forms are labeled Exhibit 'B.'

"It is the position of Carrier that we are and have been complying not only with the literal meaning but the accepted interpretation of the letter addressed Mr. Springer, this position being strengthened and borne out by exhibits previously referred to. The letter, as written, cannot nor was it intended to be construed as an agreement. It simply states the policy of Management 'to handle each case which arises and decide it upon the merits.' That is the language used and it is not susceptible to any other meaning. The case at issue was so handled and in the absence of any agreement, either verbal or written, that compels Management to pay for service not performed, it is the position of Carrier that Organization's claim is wholly and totally unfounded and we respectfully request that same be denied."

**OPINION OF BOARD:** Train Dispatcher T. A. Boles filed a claim for time lost in the amount of 19 working days during August 1940. Boles while off duty and away from the railroad property and in no way connected with his railroad work was accidentally injured. It is for the loss of time due to that injury that this claim is filed.

The Train Dispatchers of the Delaware & Hudson Railroad Corporation entered into an agreement with the Carrier covering the working conditions of the Train Dispatchers on that railroad. During the negotiations between the parties there was discussed the inclusion in the agreement of a rule that would pay Dispatchers for time lost account personal sickness up to a reasonable amount of time. Various reasons are set out why this rule was not included in the agreement. Before the agreement was closed the Carrier handed to the representatives of the Employes a letter dated June 25, 1940, which is as follows:

"Albany, N. Y.
June 25, 1940
012-32

Mr. J. B. Springer,
Vice President, A. T. D. A.,
Hotel Hampton,
Albany, N. Y.

Dear Sir:

As you have been informed, under certain conditions this Railroad has been allowing pay to its employes in dispatching service on sick leave.

The Management will continue to handle each case which arises and decide it upon the merits.

Yours truly,

(S) F. L. Hanlon,
Chairman, Board of Disciplining Officers."

Just before signing the agreement on June 25, 1940, Mr. Springer, replying for the Employes, wrote a letter to Mr. Hanlon in which he acknowledged receipt of the letter covering sick leave pay and stated, "These papers appear to be in order and in accordance with understanding reached in conference today. We are signing the Agreement and returning to you herewith. . . ."

The Carrier contends that it made no agreement covering sick pay. It advised the Organization that each case would be treated on its merits. We do not find it necessary in this case to discuss the contentions of the various parties in regard to the effect of this letter of June 25, 1940. These contentions will be discussed and decided in other awards which are now pending before this Board. This record shows without any dispute that the time lost for which claim is made was due to an accident in no way connected with the work that the employe was performing for the Carrier. It is not a question of being paid for loss of time due to sickness but it is a question of being paid for loss of time due to an accident. In the negotiations had between these parties all that the Employes ever asked to have inserted in the agreement was that "time lost account personal sickness shall be paid up to a reasonable amount of time." At no place in the submission is there any contention made that the payment was to be for anything in addition to the loss of time due to sickness. In this case the loss of time was not due to sickness; it was due to an accidental injury which unfortunately the employe suffered and which disabled him from performing tasks assigned to him by his employer. During the time he was incapacitated the employer was put to the added expense of employing someone to fill this position. In denying the claim the Carrier in its letter of January 7th specifically stated that Dispatcher Boles was injured while off duty and away from the railroad's property and it was in no way responsible. We cannot come to any other conclusion than that the loss of time was due to the accidental injury of claimant; that he is not entitled to recover.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1942.