

Award No. 1816
Docket No. TD-1743

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (a) Claim of the train dispatchers that Train Dispatcher H. D. Jones, Ogden, Utah, office of Salt Lake Division was improperly compensated for his services on Monday, February 10, 1941, his regular relief day, (on which day he was required to report to Mr. F. W. Bower, General Claims Agent, San Francisco, California) in accordance with the Train Dispatchers' Agreement in effect on this property.

(b) Claim of the train dispatchers that Train Dispatcher H. D. Jones should have been compensated at the rate of time and one-half on this date instead of straight time, and that he be paid an additional one-half day's pay therefor.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the Southern Pacific Company (Pacific Lines) and its Train Dispatchers, represented by the American Train Dispatchers Association, Governing the Hours of Service and Working Conditions for Train Dispatchers, effective October 1, 1937.

Mr. H. D. Jones is a permanently assigned train dispatcher in the Ogden, Utah office, Salt Lake Division, hours of service 8 A. M. to 4 P. M. established relief day Monday. On January 30, 1941 he received the following instructions:

"In the case of Tilford vs. Southern Pacific Company, trial has been set for February 11, 1941, and you are hereby instructed to report at the office of Mr. F. W. Bower, S. P. Building 65 Market Street, San Francisco, 9:00 A. M. Monday, February 10, 1941.

"It is anticipated trial will last 4 or 5 days and you should go prepared to stay that long. N-303"

Mr. Jones reported to Mr. Bower 9:00 A. M. Monday, February 10, 1941, as instructed and after spending the day in the law office, was excused with instructions to return to Ogden on Train No. 28, that night (February 10, 1941). These instructions were carried out by Mr. Jones and in rendering report of earnings and expenses he claimed pay for Monday, February 10, 1941, at rate and one-half account Monday being his established relief day. Claim for time and one-half was denied by the carrier.

Article 3 (a) of the Agreement reads:

"Each regularly assigned train dispatcher, (and extra train dispatcher) who performs six (6) days dispatching service in any one

patcher Jones did not work on Monday, February 10—his regular relief day—as a train dispatcher, for on that day he was in San Francisco for the purpose of performing court service, if needed.

CONCLUSION

The carrier asserts that it has established that Article 3 (a), of the current agreement between the petitioner and the carrier, is not applicable to the factual situation in the instant case and has further established that it has conformed to all the provisions of the current agreement by compensating Dispatcher Jones in the manner previously set forth in this submission and therefore it is incumbent upon this Board to deny the alleged claim.

OPINION OF BOARD: The claimant is a train dispatcher who at the request of the carrier attended court. The carrier paid him for three days at the regular rate. One of the days included his relief day and he claims to be entitled to pay at the rate of time and a half.

The determination of the question before us involves the interpretation of two rules which read as follows:

"ARTICLE 3

Relief Days

(a) Each regularly assigned train dispatcher (and extra train dispatcher) who performs six (6) days dispatching service in any one week will be allowed and required to take one day off as a relief day, except when unavoidable emergency prevents furnishing relief. If required to work such relief day, will be allowed compensation on basis of rate and one-half."

"ARTICLE 4

Court Service

(e) Train dispatchers who, at request of the company attend court or appear as witnesses for the carrier will be furnished transportation, and will be compensated at the daily rate of their assignment, or if extra, at trick train dispatcher's daily rate for each day so engaged (with a maximum of eight (8) hours for each calendar day), and in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the carrier."

Attendance by an employe at court or as a witness in an investigation constitutes the exceptional case and is work performed outside his regular duties. In a number of awards it has been held that the rules of an agreement relating to work do not cover the performance of such a special service. Awards 134, 409, 487, 605, 773, 1032.

The awards were rendered in spite of the fact that in none of these cases was there a rule covering the performance of the particular service. In the case now before us there is a rule which provides that the employe shall be compensated at the daily rate of his assignment. Article 4 (e) applies to the exceptional case where he may be called on to attend court or appear as a witness. It contains no provision for payment of time and a half if he is called on for such service on his relief day.

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 19th day of May, 1942.