

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
DELAWARE & HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim for time lost two (2) working days, November 1 and 2, 1940, amount \$19.94 for Train Dispatcher H. J. McMurray, on account of illness.

Note: The respective statements of fact and the original submissions of the parties to this case appear in Award 1678 (Docket TD-1694) adopted January 15, 1942.

OPINION OF BOARD: This identical claim was before this Board in Award No. 1678, and was remanded to the parties for the development of additional evidence in reference to past practices.

The opinion of the Board in that award says:

"'Under certain conditions' can mean to this Board only one thing, that is, that under past practices the Carrier has been handling claims for time lost on account of personal sickness in a certain manner; when the Carrier inserted in its letter the words 'Under certain conditions' it meant that it would continue to pay sick claims as it had in the past. And this Board holds that under the Hanlon letter Carrier has bound itself to pay for time lost by dispatchers for personal sickness in the same manner as it was paying prior to the time the agreement was entered into. There is a material dispute between the parties as to just exactly what was the manner in which payments were made for time lost due to personal sickness prior to the signing of the agreement.

"What were the past practices of this carrier? Employees say all time lost for personal sickness was paid. The Carrier contends that they paid only when there was no added expense."

In reference to past practices, the additional evidence shows that from January 1, 1925, to April 1, 1940, (effective date of the agreement) 1,028 days were lost on account of employees being sick and paid for without additional expense to the Carrier; and 137 days were lost and paid for with additional expense to Carrier; while in the same period of time, 5 days were lost and not paid for. Under this evidence, the only conclusion that can be drawn is that the Carrier paid for all time lost on account of legitimate sickness, whether it was or was not at additional cost to the Carrier.

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 the current agreement was violated by the Carrier as contended by the Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.