

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association in behalf of Train Dispatcher A. D. Butler, Tucson, Arizona office, for one day's pay at pro rata rate, May 31, 1943 (8:00 A. M. to 4:00 P. M.), the hours of his regular assignment, on which the Hours of Service Law prevented his working, due to being required by the Management to work another assignment on account of illness of the assigned train dispatcher thereon.

EMPLOYEES' 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, Effective October 1, 1937 (rewritten September 24, 1942), Governing the Hours of Service and Working Conditions of Train Dispatchers.

Article 3, (a-1) and (a-2) of said agreement reads as follows:

"(a-1). Each regularly assigned train dispatcher (and extra train dispatchers who perform six (6) consecutive days' dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half. An extra train dispatcher required to work seven (7) consecutive days as a train dispatcher, will be paid time and one-half for service performed on the seventh day.

"(a-2). The term 'rest day' as used in item (a-1) above means that for a regularly assigned train dispatcher forty-eight (48) hours, and for a relief train dispatcher (who performs six (6) consecutive days service as train dispatcher) thirty-two (32) hours, shall elapse between the time required to report on the day preceding the 'rest day' and the time required to report on the day following the 'rest day.' These definitions of the term 'rest day' will not apply in case of transfers account train dispatchers exercising seniority."

Article 4 (f) reads as follows:

"Loss of time on account of the hours of service law, or in changing positions, within an office, by the direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. This does not apply in case of transfers account employees exercising seniority."

Train Dispatcher A. D. Butler was a regularly assigned train dispatcher in the Tucson office. The hours of his assignment was 8:00 A. M. to 4:00 P. M., designated Rest Day Sunday. He worked his regular assignment on Saturday, May 29, 1943. At about 4:00 P. M. Sunday, May 30, 1943, he was notified by the Chief Dispatcher's office to report for work on third trick (12:00 midnight to 8:00 A. M.) that night, account of sickness of the train dispatcher regularly assigned to this position.

In taking the aforesaid position the petitioner fails to consider the fact that the claimant was used on Position No. 11 on May 31, 1943 only because of conditions beyond the control of the carrier, namely, the absence of the regular assigned occupant of Position No. 11 due to illness, the unavailability of an extra train dispatcher to fill said position, and the necessity of filling said position. The petitioner likewise fails to consider the fact that the claimant was compensated for May 31 in the amount of \$17.40, or an amount of \$5.80 more than he would have received had he merely worked his regular assignment on said date.

In other words, the petitioner cannot establish that the carrier's action in using the claimant to fill Position No. 11 on May 31 was in any way arbitrary or that in so using the claimant he suffered any loss in compensation.

If an extra train dispatcher was available and used to fill Position No. 11 on May 31 he would have been compensated an amount of \$11.60 for said service. Therefore, in using the claimant to fill said position the carrier was penalized to the extent of \$5.80 due to the fact that it was necessary, in order to comply with Article 3 (a-1) and (a-2), to compensate the claimant at the rate of time and one-half for said service.

Notwithstanding this fact the petitioner would have the carrier penalized further to the extent of paying the claimant for his regular assignment on May 31 although he was unable to work said assignment due to the operation of the Hours of Service Law, and it was necessary to use an extra train dispatcher who became available at 8:00 A. M. on May 31 to fill the claimant's regular assignment.

The use of the claimant on Position No. 11 on May 31, 1943, due to an emergency, and his being compensated for said date in excess of that which he would have earned had he merely worked his regular assignment cannot in any way be considered as detrimental to the claimant or in violation of the current agreement.

The carrier submits that the current agreement in no way supports the claim in this docket; furthermore, the petitioner has at no time contended that any specific provision or provisions of the current agreement support said claim.

CONCLUSION

The carrier submits that it has established that the claim in this docket is without basis or merit, and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimant was a regularly assigned First Trick Train Dispatcher with hours from 8:00 A. M. to 4:00 P. M., Monday through Saturday of each week with Sunday as his rest day. On Sunday, May 30, 1943, it was necessary for him to work the Third Trick, hours 12:00 Midnight to 8:00 A. M., Monday, May 31st, and he was paid at time and one-half rate under the provisions of Article 3 (a-1), and 3 (a-2). Since he had worked from Midnight to 8:00 A. M., Monday, May 31, 1943, he was prevented from working his regular First Trick assignment, from 8:00 A. M. to 4:00 P. M. of that day.

Claimant contends that he is entitled to a day's pay for not being able to work this assignment under Article 4 (f) which reads:

"Loss of time on account of the hours of service law * * * shall be paid for at the rate of the position for which service was performed immediately prior to such change."

This referee has been cited several awards, but none of them are in point.

The claimant says that "Loss of time" refers solely to the time a train dispatcher is entitled to work under the agreement in accordance with his

assignment, and is prevented from doing so by the "Hours of Service Law." In other words, "Loss of time" in this rule is the loss of an opportunity to work for a given time, to which a train dispatcher is entitled to work by virtue of the exclusive right to work a specified time on any day. As applied to the claimant under his assignment, he had a right to work from 8:00 A. M. to 4:00 P. M. on each day of the week except Sunday. Therefore, the loss of time is not equivalent to loss of compensation.

On the other hand, the Carrier contends that the claimant did not have a "loss of time" under the facts of this record, and that he worked eight hours on Monday, May 31st that is, from Midnight to 8:00 A. M. and, therefore, there was no loss of time on that day; nor was there any loss of time that week or month. Instead of loss of time, claimant actually gained a half-day's pay. Carrier treats the term "lost time" as equivalent to loss of compensation.

The record shows that under the claimant's assignment, he had the exclusive right to work from 8:00 A. M. to 4:00 P. M. each day from Monday through Saturday. He was prevented from working Monday, May 31st, on account of the Hours of Service Law. In other words, on account of the Hours of Service Law, he lost the opportunity of working that day, as was his right under his regular assignment. His "loss of time" of the right to work that day was the result of the Hours of Service Law, and, therefore, under Article 4 (f) the claim should be sustained.

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 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 Carrier violated the Agreement 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 13th day of December, 1944.