

Award No. 3198

Docket No. TD-3264

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

STATEMENT OF CLAIM: Claim by the American Train Dispatchers Association that:

(a) The Nashville, Chattanooga & St. Louis Railway did not comply with the terms of Article 3 (a) nor with Article 7 (f) of the current schedule-agreement entered into between the parties to this dispute on April 1, 1945, when the Carrier failed to compensate Train Dispatcher M. S. Nix of the Hills Park, Georgia, office in accordance with the provisions thereof for appearing, on instructions given him by the Carrier, as a witness at an investigation held on June 26, 1945, the day which was the rest day assigned to Mr. Nix's regular position.

(b) The Nashville, Chattanooga & St. Louis Railway shall now compensate Mr. Nix in accordance with the requirements of either of the rules, i.e., Article 3 (a) or Article 7 (f) of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. S. Nix at the time this claim arose was a regularly assigned train dispatcher in the Hills Park, Georgia office, dispatching trains by the means of Centralized Traffic Control, with assigned hours 7:00 A.M. to 3:00 P.M., with one rest day (Tuesday) each week assigned to his position.

On or about June 23, 1945, the Carrier ordered Mr. Nix to report to Trainmaster T. L. Phillips' office at 9:30 A.M., Tuesday, June 26, 1945, as witness for the Carrier at an investigation which was held because of alleged failure of certain train service employees to comply with certain Centralized Traffic Control rules. (See Exhibit TD-2). Mr. Nix reported as ordered and gave testimony as witness for the Carrier, for which he received no compensation.

This claim has been handled up to and including the highest officer designated by the Carrier for that purpose, whose letter denying the claim is shown as Exhibit TD-1.

POSITION OF EMPLOYEES: There is an agreement between the Nashville, Chattanooga & St. Louis Railway, and its Train Dispatchers represented by American Train Dispatchers Association, governing Hours of Service, Working Conditions, and Rates of Pay for Train Dispatchers, effective April 1, 1945.

Article 3(a) of this Agreement reads as follows:

"3(a) Each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service)

To rule that Carrier's position is not correct and rule that employes who attend investigations involving operating matters for the purpose of making a statement of facts in connection with the matter under investigation, are entitled to be paid for such attendance irrespective of the fact that they lost no time, would be tantamount to converting the discipline rules to potential penalty rules which obviously was not the intent.

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The Employes base the claim on "Article 3(a) or Article 7(f)." The provisions of these rules conclusively show that they are not synonymous as to application. The Employes failure to base the claim on any specific rule evidences the uncertainty in their own opinion of the validity of the claim.

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OPINION OF BOARD: On June 26, 1945, Claimant was required to attend an investigation as a witness for the Carrier on his assigned day of rest. The Organization contends that he should be compensated under Article 7 (f) of the current Agreement reading as follows:

"A train dispatcher who at request of the management, attends court, or appears as witness for the Railway, will be furnished transportation, and will be paid for time lost, or if an extra dispatcher, at the trick train dispatcher's daily rate, for each day so engaged, with a maximum of eight hours for each calendar day. If regularly assigned and so used on the rest day assigned to his position, he will be allowed eight hours pay at the pro rata rate of the position to which assigned. Necessary actual expenses while away from headquarters will be allowed. Any witness fees or mileage accruing will be assigned to the Railway."

The effective date of the current Agreement is April 1, 1945, and it is the first agreement negotiated between this Carrier and the Dispatchers. The record shows that prior to its negotiation, it was the practice not to pay employes for attendance at investigations on their assigned days of rest. The question for determination is whether Article 7 (f), heretofore quoted, now requires such payment.

In considering the particular language used in the rule, especially the words "attends court, or appears as witness for the Railway," it is evident that it means something more than appearing as a witness in court for, if such were not the case, there would have been no occasion for including the words "or appears as witness for the Railway." It cannot logically be argued that attending court does not include one's appearance as a witness in court. It is urged that the use of the word "witness" of itself evidences an intent to limit the effect of the rule wholly to court proceedings. We do not think the word "witness" as used in the rule before us has such a limited meaning. In our opinion it means one who gives oral testimony concerning a transaction or event of which he has personal knowledge. An appearance in court is not a necessary element of the definition when it is used in its ordinary sense. It is self evident, therefore, that the addition of the words "or appears as witness for the Railway" contemplates something more than an appearance in court. We think it means that it was intended to include employes who appear as witnesses at investigations or other similar hearings where the taking of testimony is contemplated.

It is urged that the parties in negotiating the rule placed a mutual construction upon it which we are obligated to follow. Assuming for the purpose of this opinion that the rule is so indefinite and ambiguous that we are warranted in examining the negotiations of the parties in an attempt to discover what the parties themselves meant by the rule, we find a definite conflict between the parties as to what was then intended.

Prior to the negotiation of the present Agreement, effective April 1, 1945, the Train Dispatchers Committee proposed the following rule:

"Attending Court. A train dispatcher required by the Railway Company to attend court, inquests, investigations, or hearings shall be allowed the same compensation as he would have received if working his assignment, and if unassigned he shall be paid rate applicable to truck train dispatcher; if regularly assigned and so used on the rest day assigned to his position, he will be allowed eight (8) hours' pay at time and one-half rate. He shall be reimbursed for necessary expenses incurred. Such witness fees or mileage as he may receive shall be assigned to the Railway Company."

The Carrier says that it refused to go along with the Employees to the extent indicated by this proposed rule and that the negotiated rule was agreed to for the very purpose of eliminating pay for attending inquests, investigations and hearings and limiting the application of the rule to attendance in court or analogous matters.

The Organization's representative states that he was the spokesman for the Dispatchers' Committee when Article 7 (f) was negotiated and he appears as a signatory to the current Agreement. His version of the preliminary negotiations is that the Carrier objected to the wording of the proposed rule, because it would evidently support claims where the employe appeared at a hearing or investigation where he was personally involved. To meet this and other objections, Article 7 (f) was substituted and agreed to.

It is readily seen that no mutuality of intent is shown nor does it appear that there has been any mutuality of application of the rule since the Contract was negotiated. This differentiates the case from Award 3089.

We conclude, herefore, that the rule as it appears in the Agreement applies where an employe is required by the management to appear as a witness at an investigation. It is a rule of contract construction that effect should be given to all the language of an agreement whenever it is possible to do so. The presumption is that every word, phrase and clause was included for a purpose. We can only give effect to the words "or appears as witness for the Railway" by holding that it applies where the employe is required to attend investigations and hearings for the purpose of giving evidence even though it is not a court proceeding as that term is generally understood.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 1st day of May, 1946.