

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) The Chesapeake and Ohio Railway Company (Chesapeake District) hereinafter referred to as "the Carrier," failed to comply with the provisions of Article 3 (b) 1 of the currently effective agreement between the parties to this dispute when it failed and refused and continues to fail and refuse to compensate Train Dispatcher L. R. Adkins of its Peru, Indiana train dispatching office in accordance with the above cited Article 3 (b) 1 for service in connection with attendance at a formal investigation on July 20, 1953.

(b) The Carrier shall now pay to Train Dispatcher L. R. Adkins—

1. The difference between the pro rata rate, which he was paid for 5 hours and 45 minutes traveling to and from the point where required to attend the investigation, and the time and one-half rate to which he is entitled, and

2. At the time and one-half rate for one hour and 15 minutes during which he was required to serve the Carrier waiting before and after the investigation for which the Carrier has paid him nothing.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an agreement between the parties, effective August 16, 1948, and revisions thereto including Memorandum of Agreement made at Richmond, Virginia, August 12, 1949, covering Schedule of Wages and General Regulations for train dispatchers. A copy of this Agreement, identified as No. 5, is on file with your Honorable Board and, by this reference, is made a part of this submission the same as though fully set out herein.

The following rules of said Agreement are pertinent to adjudication of this dispute:

Rule 3 (a)—Memorandum of Agreement dated August 12, 1949, reading:

Furthermore, the Hours of Service Law, covering the number of hours train and engine service employes and employes handling train orders may be on duty, does not consider deadheading as time on duty. In this connection, the Interstate Commerce Commission in Ruling No. 74 of "Conference Rulings on the Hours of Service Law by the Commission" held:

"May 5, 1908.

74. Hours-of-Service Law.—Employes deadheading on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are deadheading, are not while so deadheading 'on duty' as that phrase is used in the act regulating the hours of labor."

In addition, the National Railroad Adjustment Board has ruled that deadheading is not service. In First Division Award 14711, the Board held in denying the claim:

"It is true Article 28 now permits the combining of deadhead with other road service. But it has been repeatedly held in many awards of this Division that 'deadheading cannot be said to be either freight or passenger service.' Awards Nos. 4640, 4641 and 9541."

In denial Award 14834 the First Division, National Railroad Adjustment Board, held:

"This Division has unanimously held that deadheading is not service."

Deadheading is not service and Dispatcher Adkins has been properly paid in accordance with the applicable agreement rules.

Claim should be denied.

All data submitted have been discussed in conference or by correspondence between the parties in the handling on the property.

OPINION OF BOARD: The Organization contends Claimant should have been paid at the rate of time and one-half under Rule 3—Rest Days and Relief Service, for attending a hearing on his rest day at the direction of the Carrier. He was not involved and appeared as a witness for the Carrier. This on the theory that he was performing a service for the Carrier, citing in support thereof Awards 3462, 3966, 4700, 6846, and others; also, Article 3 (b) 1. Claimant was paid 5 hours and 45 minutes at pro rata rate traveling to and from the point where he was required to attend an investigation. And as it was his rest day, he asks that he be paid at time and one-half rate, also for time, one hour and 15 minutes, waiting before and after the investigation where he appeared as a witness for the Carrier. It is agreed that at the time in question he was serving as a regular assigned dispatcher.

Respondent Carrier contends Claimant was properly paid under Rule 8 (b) read in connection with Rule 7 (f) of the current Agreement, citing Awards 6651, 5376, 2512 and others on the proposition that special rules take precedence over general rules in proper construction of contract law.

Rule 8 (b) is a long and complicated rule going into detail on the method of payment where in discipline cases an employe attends a hearing or investigation and is not found at fault in the matter. In one provision, it provides that should a train dispatcher have to deadhead to attend such hearings, the compensation to be paid is on the basis of Rule 7 (f).

We are in agreement with the legal proposition that special rules of an Agreement take precedence over general rules definitely covering the subject matter under consideration. However, in a careful reading of the Agreement, we are inclined to the view that Rule 7 (d) meets the method of payment of compensation for the service rendered, not 7 (f). Rule 7 (d) provides in part:

"Dispatchers required to attend court at the request of the railway or to appear as witnesses for the railway, will receive the same pay per day as they would have received for the regular hours of their assignment, except that if so used on their regularly assigned rest day or on the seventh consecutive day of service they will be paid at the rate of time and one-half for the regular hours of their assignment. They will be furnished necessary transportation and allowed necessary traveling and living expenses while away from home. * * *."

Rule 8 refers to Discipline cases. Rule 7 to Rates of Pay—Time Lost Under Hours of Service Law—Court Attendance—Deadheading, etc.

We agree that Rule 3 applies to the general situation and is properly cited. However, Rule 7, being a special rule, controls in the instant case and specifically the provisions of Rule 7 (d) and Claimant should be paid in accordance therewith.

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

The Agreement was violated.

AWARD

Claims sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.