

Award No. 10610

Docket No. TD-11827

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
AND THE LAKE ERIE & EASTERN RAILROAD COMPANY**

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

(a) The Pittsburgh and Lake Erie Railroad Company, hereinafter referred to as "the Carrier" violated the currently effective agreement between the parties to this dispute, particularly Article 8 (f) and Article 9 (d) when it failed and refused to compensate Assistant Chief Train Dispatcher A. S. Roush two (2) days' pay for attending investigations at Pittsburgh, Pennsylvania, on July 14th and 15th, 1958.

(b) Carrier shall now compensate Assistant Chief Train Dispatcher A. S. Roush two (2) days' pay at pro rata rate of Assistant Chief Train Dispatcher position for Sunday, July 13th and Monday, July 14th, 1958.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the New York Central Railroad (including the following Districts) New York Central, Buffalo and East; New York Central, West of Buffalo; Grand Central Terminal; Boston and Albany, Cleveland, Cincinnati, Chicago & St. Louis, (including Peoria and Eastern); The Indianapolis Terminal; The Indiana Harbor Belt Railroad; the Pittsburgh and Lake Erie Railroad and train dispatchers represented by the American Train Dispatchers Association, effective April 1, 1944, with amendments to December 1, 1954 on file with your Honorable Board and by this reference is made a part of this submission as though it were fully set out herein.

Article 8 (f) and Article 9 (a), (b), (c) and (d) which are particularly pertinent to the instant dispute are quoted here for convenience and ready reference:

All data contained herein has been made known or available to the Employees.

OPINION OF BOARD: The Claimant was an Assistant Chief Train Dispatcher, who, at the time the claim arose, was scheduled to work from 11:00 P. M. to 7:00 A. M., Friday through Tuesday, with rest days Wednesday and Thursday. Due to train delays, and telephone conversations with the Superintendent, he was ordered to attend an investigation in the office of the Assistant Superintendent at 9:00 A. M., on Monday, July 14, 1958; concerning a complaint of Superintendent Bertrand and he was also directed to attend an investigation at 9:00 A. M., on Tuesday, July 15, 1958, because of train delays on July 11 and 12, 1958. Claimant did not work his trick commencing 11:00 P. M., on Sunday, July 13, 1958, nor his trick commencing 11:00 P. M. on Monday, July 14, 1958. The Claim is for "two (2) days' pay at pro rata rate . . . for Sunday, July 13th and Monday, July 14, 1958."

Article 8(f) of the Agreement provides:

"(f) ATTENDING COURT OR INQUEST"

A train dispatcher required to (a) attend court or inquest, (b) attend hearing or investigation if not disciplined, or instructions of proper Company representative, will be paid not less than he would have earned on his assignment, and when so used outside of regular working hours of his assigned work day will be paid for actual time so engaged, with a minimum of two hours at pro rata rate. When attending court or inquest on his weekly rest days, either or both of such rest days, he will be paid one day at regular daily rate for each day. Actual necessary expenses away from headquarters will also be allowed, and any witness fees or mileage allowances received will be assigned to the Railroad.

A train dispatcher required to attend hearing or investigation on his weekly rest days, either or both of such rest days, if not disciplined will be paid 4 hours at pro rata rate as a minimum but if held in excess of 4 hours a day's pay at pro rata rate will be allowed."

The investigation on Monday, July 14, 1958, consumed one hour and fifty minutes so that the meeting adjourned at about 10:50 A. M. On Tuesday, July 15, 1958, the investigation consumed three hours and 45 minutes, so that the meeting adjourned approximately 12:45 P. M. The Carrier has offered to pay to the Claimant two hours at the pro rata rate for attending the investigation meeting on July 14 and three hours and 45 minutes at the pro rata rate for attending the investigation meeting on July 15, 1958.

First, it is the Organization's position that the Claimant was not disciplined on July 14, 1958 and he was, therefore, "entitled to not less than he would have earned on his assignment which is compensation of a day's pay for July 13, 1958." Second, because Claimant was disciplined on July 15, 1958, and later such discipline was removed, he is entitled to be "compensated for net loss of wages because of the provisions of Article 9(d)." This Article 9(d) provides:

"(d) REINSTATEMENT"

An employee disciplined who, after the above procedure has been followed, is found blameless, or whose discipline is modified, shall

be reinstated without loss of seniority and have his record corrected. If found blameless, and unless otherwise agreed upon, such employee, shall be compensated by the railroad for his net loss of wages."

Claimant was disciplined as a result of this investigation. He was given a reprimand for his "failure to take the necessary steps to avoid the unnecessary delays which occurred to B&O trains, 25, 26 and 6, between MO and West Ellwood Junction, July 11 and 12, 1958, while working in the capacity of Assistant Train Dispatcher." After a conference on a claim filed by the Organization, the Carrier removed the reprimand from the record.

There is no question that the Claimant was directed by the Carrier to attend the investigation meetings at 9:00 A. M., on July 14 and again on July 15, 1958. The mere direction to attend these investigations did not authorize the Claimant to stay off his job on July 13 and 14. Article 8(f) above quoted, specifically provides that when an employee is "used outside of his regular working hours on his assigned work day will be paid for actual time so engaged, with a minimum of two hours at pro rata rate." Claimant was used "outside his regular working hours on his assigned work day." The investigation did not materially interfere with his ability to work the scheduled hours beginning on July 13 and 14, 1958. His absence from work on those days was voluntary.

Article 9(d) is not applicable in this case. He was not suspended or discharged. He was only reprimanded. This did not prevent him from working his scheduled hours. He suffered no involuntary "net loss of wages." He lost his wages for those days because he voluntarily absented himself.

The mere fact that the Carrier first paid the Claimant for the two days does not adjudicate this claim. When the error was discovered, the sum was deducted from a subsequent pay check. Errors of this kind may frequently occur in a large Organization. He was paid for those two days on July 24 and later deducted on August 9, 1958.

The Organization contends "that there has been a practice of long standing on this property, (approximately thirty years) to compensate train dispatchers for attendance at investigations such as involved herein." The only evidence in the record on this subject is the admission by the Carrier that there "may have been instances when employees were held off their regular assignments to attend investigations as witnesses for the Carrier and such employees were allowed compensation." Here, the investigation involved the Claimant. The burden of proof of past practice is upon the Organization. We have consistently held that mere assertions of a past practice is not proof. See Awards 5501 (Whiting), 6616 (Bakke), and First Division Awards 7149 (Simmons) and 19443 (Daugherty).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 did not violate the Agreement.

AWARD

Claimant shall be paid a total of 5 hours and 45 minutes at the pro rata rate as previously offered by the Carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.