

Award No. 10808

Docket No. TD-12147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" failed to comply with the currently effective Agreement, including 4-A-1, 4-A-2 and 4-C-1, when it failed and declined to compensate the individual claimants named in Paragraph (b) next following for service performed in connection with their required attendance at Transportation Employees Education Program, on the dates herein specified.

(b) That the Carrier now be required to compensate the individual claimants for such service as follows:

(1) E. C. Myers, two hours at overtime rate for September 22, 29 and October 6, 1958.

(2) E. C. Bossinger, two hours at overtime rate for September 22 and 29, 1958.

(3) L. R. Clem, two hours at overtime rate for September 22, 29 and October 6, 1958.

(4) D. F. Hysong, two hours at overtime rate for September 22 and 29, 1958.

(5) G. E. Witherup, two hours at pro rata rate for September 22 and 29, 1958.

EMPLOYEES' STATEMENT OF FACTS: An agreement on rules governing compensation, hours of service and working conditions, dated September 1, 1949, between the parties to this dispute, and applicable to the claimants in this case, was in effect at the time this dispute arose. A copy of that agreement is on file with the Board and is, by this reference, made a part of this submission as though fully incorporated herein.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the American Train Dispatchers Association and The Pennsylvania Railroad Company.

Claimants were required to attend a class entitled "Transportation Employees Education Program." Claimants contend that Carrier failed to comply with Rules 4-A-1, 4-A-2, and 4-C-1, when it did not compensate the Claimants for their attendance.

"4-A-1. Eight (8) consecutive hours of service, exclusive of the time required to make transfer, shall constitute a day's work for Load Dispatchers, Tower Directors and Assistant Tower Directors.

"4-A-2. (Effective on the Pennsylvania Railroad February 1, 1942.) (a) Time worked in excess of 8 hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis. The pro rata hourly rate will be computed by dividing the monthly rate by 208-2/3 hours.

"(b) The term "time required to make transfer," as used in this Regulation (4-A-2) includes the time it is necessary for the Train Dispatcher who is being relieved, to turn over to the relieving Train Dispatcher to fully and completely begin dispatcher service on the trick to which he is assigned. A Train Dispatcher who is required to remain in charge during the time transfer is being made will not be considered as having accrued overtime. Except to extent provided herein with respect to transfer time, a Train Dispatcher required to remain on duty after the expiration of his tour of duty will be paid for such time as overtime.

"4-C-1. (Effective on the Pennsylvania Railroad February 1, 1942.) (a) Each regularly assigned Train Dispatcher (and extra Train Dispatchers who perform six 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 consecutive days as a Train Dispatcher, will be paid time and one-half for service performed on the seventh day.

"(b) The term "rest day" as used in this Regulation (4-C-1) means that for a regularly assigned Train Dispatcher 48 hours, and for a relief Train Dispatcher (who performs six consecutive days' service as Train Dispatcher) 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.

"(c) Management will designate an established rest day for each position, in accordance with the foregoing paragraph of this Regulation. Not less than three (3) days' notice will be given of a permanent change in assigned rest days."

The Carrier contends that there are no provisions of the Rules authorizing such payments.

Thus, the issue is joined. Can the Carrier require the Claimants to attend a class without compensating them for their time.

The issue turns on whether or not the time is considered work or service as the words are used in Rules 4-A-1, 4-A-2, and 4-C-1.

At the outset, we are of the opinion that any time of the Employee directed by the Carrier is work or service, with certain exceptions. Two exceptions are where such time is for the primary benefit of the Employee and in cases where mutuality of interest exists. Awards have held that classes on operating rules and safety rules are such exceptions. We are not inclined to enlarge upon those awards.

For the foregoing reasons, we are of the opinion the Agreement was violated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10808, DOCKET TD-12147

The Majority erroneously holds by implication that Claimants had no "mutuality of interest" in this case when they said:

"At the outset, we are of the opinion that any time of the Employee directed by the Carrier is work or service, with certain exceptions. Two exceptions are where such time is for the primary benefit of the Employee and in cases where mutuality of interest exists. Awards have held that classes on operating rules and safety rules

are such exceptions. We are not inclined to enlarge upon those awards."

The Referee was advised that Claimants had an obligation under the Book of Rules to perform their duties in a "safe and efficient" manner. The Referee was given examples of how the knowledge and proper administration of the operating employes scheduled rules resulted in a more efficient operation. The Majority was also referred to Judge Carter's Award 4250 where he held that "employes in qualifying themselves for positions and keeping themselves qualified, and to achieve promotion, are serving themselves primarily."

There is absolutely no question that Claimants must know and be familiar with the Operating employes scheduled rules to perform their work efficiently. In short, it is part of their qualifications. Failure to know and apply the operating employes' scheduled rules in an efficient manner could result in discipline. Thus, it was to their advantage and indeed, their responsibility to be qualified. There was unquestionably a mutuality of interest involved here. Under such circumstances, the claim should have been denied. Failure to do so constitutes grievous error in the award rendering it invalid and unenforceable.

For the reasons stated above, we dissent.

/s/ **W. F. Euker**
W. F. Euker

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. DeRossett**
R. A. DeRossett

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **O. B. Sayers**
O. B. Sayers

**LABOR MEMBERS' REPLY TO
CARRIER MEMBERS' DISSENT TO AWARD 10808,
DOCKET TD-12147**

The Carrier Members' dissent herein is but one more of the innumerable dyspeptic diatribes and bleating belly-aching. Were it not for the fact that the dissent is, as is almost invariably the case, not only in disregard of the record but palpably in error such driveling flummery would warrant nothing more than contemptuous disregard. But the juvenile bumptiousness here in reference cannot be permitted to pass unnoticed.

In the first place, the Carrier Members' dissent resorts to the threadbare and shabby device of quoting Award 4250 out of context. That dispute involved attendance at a rules class and the opinion is directed to that issue. In the record here the Employes made it abundantly clear that they recognize that employes may reasonably be required to qualify on the rules.

The dissent goes on to comment that:

"There is absolutely no question that Claimants must know and be familiar with the Operating employes scheduled (sic) rules to

perform their work efficiently. In short, it is part of their qualifications. Failure to know and apply the operating employes' scheduled (sic) rules in an efficient manner could result in discipline. . . ."

It is assumed that the twice-used word "scheduled" has reference to SCHEDULE agreements.

The quoted statement is manifestly incorrect and inappropriate. In the first place the record properly before the Board raises no such issues. The Carrier Member attempted to inject such an argument during the panel argument before the Referee and it was the subject of timely and earnest objection on the part of the author of this comment. The author of the Carrier Members' dissent, irrespective of his apparent ineptness, should be well aware of two very basic facts:

First, that disputes referred to this Board are to be disposed of on the basis of the record properly before it, and, secondly, that new issues cannot be raised when a dispute reaches this Board, a fact which the author of the opinion in Award 4250, Judge Carter, which the dissent cites and quotes, pointed out on more than one occasion.

Certainly the intended purposes of this Board as an effective agency are poorly served by such repeated, insufferable and contemptuous disregard of long-existing procedures and established principles.

/s/ **R. H. Hack**
R. H. Hack, Labor Member