

Award No. 11102
Docket No. TD-11577

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(a) The Central of Georgia Railway, hereinafter referred to as "the Carrier" violated the currently effective agreement between the parties to this dispute, particularly Article IV(a) when it failed and refused to compensate Extra Train Dispatcher Cleveland Taylor a full day's pay on Friday, October 31, 1958.

(b) The Carrier shall now compensate Extra Train Dispatcher Cleveland Taylor \$1.68 for service on Friday, October 31, 1958.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, bearing an effective date of April 1, 1938, 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 IV(a) amended effective September 1, 1949, which is particularly pertinent to the instant claim is quoted here for convenience and ready reference:

"ARTICLE IV.

(a). Basis of Employment

Train Dispatchers shall be considered monthly employees, but compensated on a daily basis. To determine the daily rate, multiply the monthly rate by 12 and divide the result by 261. To determine the straight time hourly rate divide the monthly rate by 174."

At the time this dispute arose, Claimant Taylor was an extra train dispatcher holding seniority in the Carrier's Savannah, Georgia train dispatching office.

5418, 2676, and others. Also see **Second Division Awards** Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others.

The Carrier reserves the right if and when it is furnished with the *ex parte* submission of the Employees in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in reply to all allegations and claims as may be advanced by the Employees in such submission, and which have not been answered in this, its initial answer.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Since the facts have been stated above they will not be restated in detail here. There was a strike by another craft on the property of the Carrier. Claimant's assignment on the day on question was to start at 11:30 P. M. October 30, 1958. He did not cross the picket line but waited outside the line until midnight when, upon its removal, he went to work. He was paid for 7½ hours work and claim is for the 30 minutes from 11:30 P. M. to midnight on that day.

Claimant's position is that the Agreement provides for 8 hours compensation on the day in question, that Article 4(a) states that train dispatchers shall be considered monthly Employees but compensated on a daily basis; and there are no provisions in the Agreement providing for compensation for train dispatchers on an hourly basis except in the payment of overtime.

Carrier's position is that under the terms of the Agreement that in order to receive payment of a full days pay an Employee must put in a full days work or at least be available for the performance of a full days work, that his absence from his post for the 30 minutes involved was a voluntary act on his part and that therefore he should only be compensated for the actual time he worked.

The Board finds that the Claimant's absence for the half hour was due to his own choice to respect the picket line and therefore under the circumstances his absence was voluntary.

There is a conflict in the record as to whether the Claimant waited the half hour outside the picket line pursuant to instructions from his "superior officer," William Raines, Acting Chief Dispatcher. The Board finds on this point that the Claimant has not sustained the burden of proof.

The basic problem involved here is the Claimant's contention that no provision exists in the effective Agreement for the payment of train dispatchers on an hourly basis; that since Claimant is a monthly Employee whether Carrier must pay Claimant a minimum of eight hours per day.

The two pertinent provisions of the Agreement are:

"ARTICLE 2.

"(a) HOURS OF SERVICE.

"Eight consecutive hours shall constitute a day's work for train dispatchers. The beginning and ending time of tricks shall meet with

the wishes of a majority of the train dispatchers in the office involved, with the approval of the Superintendent.

"ARTICLE 4.

"(a) BASIS OF EMPLOYMENT.

"Train Dispatchers shall be considered monthly employees, but compensated on a daily basis, the daily unit of compensation to be arrived at by multiplying the monthly rate by 12 and dividing the result by 313.

"(b) LOWER RATED POSITIONS.

"When regularly assigned train dispatchers are required by Management to work in lower rated positions they shall be paid as if they had worked in their regular position.

"(c) RATE OF PAY.

"Rate of pay of train dispatchers will be \$275.44 per month. Rate of pay for new positions shall be the same as for existing positions of a similar nature."

It is clear from the above that it was contemplated that train dispatchers must work eight hours to receive eight hours pay. This Board cannot write a "Basic Day" rule such as that which the Operating Crafts have, into the Train Dispatchers' Agreement. This must be done by negotiation.

The Board finds in this case that Article 2(a) and Article 4(a), (b) and (c) were not intended by the parties to determine, and do not determine the right of an Employee who has a regular assignment to be paid for time when he is voluntarily absent from his position. The Board is of the opinion that there is shown no violation of the existing Agreement and further that the Carrier was authorized to deduct from Claimant's pay for time he was voluntarily absent from work.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February, 1963.