



Award No. 18308

Docket No. TD-18788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, 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 (hereinafter "the Carrier") violated the effective Agreement between the parties, Rule 7, paragraph (f) thereof in particular, when it failed and refused to compensate Train Dispatcher J. W. Miles for five (5) hours deadhead time on July 28, 1969.

(b) Carrier shall now compensate Claimant for five (5) hours deadhead time at trick train dispatchers' rate in compliance with the terms of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board. By this reference said Agreement is incorporated herein and made a part of this Submission, as though fully set out.

For the Board's ready reference Rule 7, paragraph (f), is here quoted in pertinent part:

"RULE 7 — RATES OF PAY, TIME LOST UNDER HOURS OF SERVICE LAW, COURT ATTENDANCE, DEADHEADING, ETC.:

(f) Extra dispatchers deadheading on instructions from proper authority will be paid at the rate of the position on which service was performed immediately prior to deadheading, computed from the time required to report at initial point until time train arrives at point of destination. . . ."

At 7:59 A. M., July 28, 1969, Extra Train Dispatcher J. W. Miles, Claimant herein, completed a vacancy at third trick train dispatcher in Carrier's Peru, Indiana train dispatching office.

extra dispatcher may displace the junior extra dispatcher on such a vacancy at any time after the first day of the particular vacancy, but the extra dispatcher so exercising his seniority will have no claim for time lost or deadheading while exercising seniority in such move." (Emphasis added)

As instructed, Claimant deadheaded Peru, Indiana, to Fernald, Ohio, upon completion of his tour of duty as train dispatcher at 7:59 A. M., July 28, 1969. He filed a claim for deadhead time of 5 hours therefor. Such claim was submitted to Carrier's highest officer designated to handle claims by letter from the General Chairman dated October 14, 1969. Copy of this letter is attached and marked "**Carrier's Exhibit A**". It will be noted the first paragraph of Rule 7(f) of the schedule agreement is cited in support of the claim. It reads:

"Rule 7. — Rates of Pay, Time Lost Under Hours of Service Law, Court Attendance, Deadheading, etc.:

"* * *

"(f) Extra dispatchers deadheading on instructions from proper authority will be paid at the rate of the position on which service was performed immediately prior to deadheading, computed from the time required to report at initial point until time train arrives at point of destination. This rule does not apply to dispatchers learning the road to qualify for service, nor in exercising seniority rights."

Carrier denied the claim by letter dated November 17, 1969, to the General Chairman, copy attached hereto and marked "**Carrier's Exhibit B**".

In denying the claim, Carrier states:

"As instructed, Mr. Miles deadheaded from Peru to Fernald on July 28, 1969, after completion of the Dispatcher's work, such deadhead time occurring during the same time he was paid as Agent-Operator at Fernald and he was not paid therefor in addition to the hold-off day. As pointed out to former General Chairman Rogers in our letter of December 6, 1968, in connection with a similar claim involving the same claimant as here, this has always been the understanding of the provision, purpose and application of the rules.

"As stated to former General Chairman Rogers in our letter to him of December 6, 1968, and to you in conference, proof of this understanding goes back to year 1934, when the same issue arose and former General Chairman Brackman of the A.T.D.A. contended the same thing which is contended in the instant case. Copy of this exchange of correspondence was furnished General Chairman Rogers. However, for your ready reference, an additional copy is enclosed."

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that Claimant is regularly assigned as agent-operator at Fernald, Ohio, hours of assignment 8:00 A. M.

to 5:00 P. M., Monday through Friday, with rest days of Saturday and Sunday. He also holds seniority as train dispatcher and is used as extra train dispatcher as the need arises in accordance with his train dispatcher seniority.

He was used as train dispatcher for one day at Peru, Indiana, commencing at 11:59 P. M., Sunday, July 27, 1969, and ending at 7:59 A. M., Monday, July 28, 1969. As he could not perform service on his regular assignment as agent-operator commencing at 8:00 A. M., July 28, he was paid eight hours as agent-operator for that day under that part of Rule 4(e) reading:

"Time lost by extra dispatchers under the Hours of Service Law in returning to their assignments in other service will be paid for at the regular rate of the assignment in other service."

The claim is that he should be paid an additional five hours for deadheading from Peru, Indiana, to Fernald, Ohio, upon completion of his service as train dispatcher at 7:59 A. M., July 28, 1969, under Rule 7(f) of the Agreement providing:

"(f) Extra dispatchers deadheading on instructions from proper authority will be paid at the rate of the position on which service was performed immediately prior to deadheading, computed from the time required to report at initial point until time train arrives at point of destination. This rule does not apply to dispatchers learning the road to qualify for service, nor in exercising seniority rights."

The Carrier denied the claim for the five hours for deadheading on the ground that the deadheading occurred during the same time Claimant was being paid under Rule 4(e) and that he was not entitled to additional payment accruing for the same period of time.

After a careful study of the entire record of the case, including a history of the rules involved as set forth therein, and the evidence of the application of the rules through the years, we find that the claim cannot be sustained. It is clear that the intent of Rule 4(e) was to prevent loss of time by an employee from his assignment in other service under the Hours of Service Law because of having worked as train dispatcher. To say that he would be entitled to pay for loss of time under the rule in addition to pay for deadheading under Rule 7(f), when the deadheading occurs within the same period of time, would be contrary to the clear intent of the rule.

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 25th day of November 1970.