



Award No. 18910
Docket No. TD-19188

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railroad Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article 3(a) in particular by its declination to compensate Claimant R. S. Slay for service performed on March 11, 1970, a rest day assigned to his regular position.

(b) Carrier shall now compensate Train Dispatcher R. S. Slay one day's compensation at the rate of time and one-half the daily rate of his regular position for services performed March 11, 1970.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference, Article 3(a) is quoted below:

"ARTICLE 3.

(a) Rest Days.

Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. The Carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of (5) days per week. Any regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

Extra train dispatchers who are required to work as a train dispatcher in excess of five (5) consecutive days shall be paid one and one-half times the basic straight time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days."

Article 8(d) of the Agreement to which you have referred provides that:

'If final decision decrees that charges against the dispatcher are not sustained, his record shall be cleared of the charge, and if suspended, demoted or dismissed he shall be reinstated and paid for the net wage loss, if any, sustained by him.'

As stated, the claimant was instructed to report for formal investigation as a principal; and, since the charges against him were not sustained, his record was cleared of the charge. He was not suspended, demoted or dismissed and suffered no wage loss as investigation was held on one of his assigned rest days.

We note Superintendent Blassingame in declining the claim to Office Chairman B. J. McCarty, in his letter of April 21, 1970, referred to Third Division Award No. 5376 involving a dispute between the ATDA and The Virginian Railway Company which denied an identical claim based upon Article 8(d) of that Agreement, which is the same as Article 8(d) of the Agreement between your Organization and this Carrier.

In view of the foregoing, there is no basis for claim in behalf of Mr. Slay, and this is to advise you that your claim is hereby declined.

Yours truly,

/s/ O. B. Sayers"

The claim was discussed in conference on August 11, 1970, following which the decision given to the General Chairman in our letter dated June 30, 1970, was affirmed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was advised by Carrier to appear at an investigation at Carrier's Union Station Board Room, Houston, Texas on March 11, 1970 along with eight other accused employes to develop facts and place responsibility, if any, in connection with Locomotive Crane No. 14 wrongfully being placed in Train 95, Extra 753 South, at Settegast Yard, Houston, and improperly dispatched and improperly handled in this train the afternoon of March 3, 1970 without proper authority, resulting in accident to Train No. 95, Extra 753 South, about 11:20 P.M., March 3, 1970 at Danbury, Texas.

The investigation lasted three days, March 11, 12 and 13. Claimant was exonerated as a result of said investigation, and Carrier paid him for March 12 and 13. Carrier refused to pay him for Wednesday, March 11, Claimant's rest day on the basis that he suffered no wage loss.

Article 3(a) "Rest Days," the pertinent part thereof, provides as follows:

" * * *. Any regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at

rate of time and one-half for service performed on either or both of such rest days."

The Organization also relies on Carrier's alleged violation of Article 7(f) of the Agreement, reading as follows:

"(f) Attending Court.

A train dispatcher required by the railroad to attend court, or appear as a witness for the railroad shall be allowed the same compensation as he would have received if working the regular hours of an assignment as train dispatcher, and shall be reimbursed for necessary expenses incurred. Such witness fees or mileage as he may receive shall be assigned to the railroad."

Carrier's position is that Claimant suffered no wage loss because March 11, 1970 was a rest day of the night Chief Dispatcher position to which he was assigned, and relies on Article 8(d) of the Agreement in support thereof.

Article 8(d) states as follows:

"(d) Final Decision.

If final decision decrees the charges against the dispatcher are not sustained, his record shall be cleared of the charge, and if suspended, demoted or dismissed he shall be reinstated and paid for the net wage loss, if any, sustained by him."

Carrier argues that it has not been the practice to compensate dispatchers for attending investigations in which they are involved as principals rather than as witnesses.

Carrier, in support of its position, has cited Award No. 5376, involving a similar dispute as herein, and the Board in deciding the dispute, wherein Claimant and eleven other employes were called on Claimant's rest day for investigation and two found guilty and the Claimant absolved, and concerning a similar rule as Article 3(a) before us, stated:

"We believe it is clear that the word 'service' as used in Article 3 was intended at most to refer to the performance of labor primarily for the benefit of the Carrier. To give the word its bare, literal meaning not so connected would lead to absurdity. In the instant case, Carrier did not summon claimant to a hearing merely as a witness to aid it in fixing responsibility upon others so that the case might be brought under the Awards relied upon by claimant, particularly Awards 2032 and 3462. He was present as a party in interest, one of twelve employes participating in the movement of two trains, each asserting its right of way on a single track, with the consequent disastrous results. Until the facts were adduced upon hearing, he stood upon the same footing as the conductor and telegraph operator who were ultimately found guilty of the common charge. Clearly there was a mutuality of interest which defeats the possible application of Article 3 (Awards 487, 4909)."

Said Award No. 5376 also involved a similar rule as Article 8(d) herein before us. We find no evidence of bad faith on the part of Carrier in calling Claimant as a principal rather than as a witness at said investigation. Finding said Award No. 5376 not palpably erroneous and therefore controlling in the determination of this dispute, we are thus compelled to deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.