

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21536
Docket Number TD-21187

James C. McBrearty, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Inc.

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

(a) The Burlington Northern Inc. (hereinafter referred to as "the Carrier"), violated Article 3 (b) of the current effective Agreement between the parties when it declined the punitive rate timeslips presented by Claimant Train Dispatchers C. E. Spade and K. L. Bell for eight (8) hours each to attend investigation at The Dalles, Oregon on Wednesday, September 12, 1973.

(b) Because of said violation, the Carrier shall now be required to compensate the respective Claimants named in paragraph (a) above, the difference between eight (8) hours at the pro-rata rate which they were allowed and eight (8) hours at time and one-half rate for September 12, 1973.

OPINION OF BOARD: This dispute is solely concerned with the rate of compensation to which the Claimants are entitled for attending an investigation at The Dalles, Oregon on September 12, 1973, an assigned rest day for each of the Claimants.

Petitioner argues that under Article 3 (b) entitled, "Service on Rest Days," Claimants are entitled to the time and one-half rate. Carrier believes Article 20 entitled, "Court Inquest" is controlling, and that under this Article, Claimants are only entitled to the straight time rate.

After a careful review of the Agreement language and the arguments of the parties, the Board finds that the contention of the Petitioner must be upheld. Article 20 merely requires Carrier to compensate Train Dispatchers at the daily rate of their assignment for each day "held from service to attend court or inquest or other business on behalf of the Company." If the day they are called as a witness falls on their rest day, their daily rate under Article 3(b) is time and one-half.

This Board also finds that Claimants were indeed "performing service" within the meaning of Article 3(b) when they attended the investigation on September 12, 1973. (See Third Division Awards 18434, 17316, 17164, 16778, 15729, 14124, 10062, 3966, and 2032; Fourth Division Awards 3440 and 417; Public Law Board No. 300, Interpretation of Award No. 2). Therefore, on the basis of all the foregoing, the claim will be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.

