

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: 1. Claim of the American Train Dispatchers Association that The Pennsylvania Railroad Company failed to comply with Regulation 4-C-1, Part I of the Agreement entered into by and between The Pennsylvania Railroad Company, the Long Island Railroad Company and Train Dispatchers, Movement Directors, Power Directors and Assistant Power Directors, employes of The Pennsylvania Railroad Company and the Long Island Railroad Company, represented by the American Train Dispatchers Association, when it failed and refused to pay Train Dispatcher E. J. Timmons for eight (8) hours at the overtime rate of pay for attending investigation on April 30, 1945—his regular assigned relief day.

2. Train Dispatcher E. J. Timmons shall now be paid at the overtime rate of pay for eight (8) hours for service performed in attending investigation on April 30, 1945—his regular assigned relief day, as required by Regulation 4-C-1 of the Agreement referred to in paragraph 1 hereof.

EMPLOYEES' STATEMENT OF FACTS: At 10:00 A. M., on Monday, April 30, 1945, Train Dispatcher B. J. Timmons, regularly assigned Train Dispatcher, Jersey City Dispatching Office, Jersey City, New Jersey, rate of pay \$338.60 per month, tour of duty 12:00 midnight to 8:00 A. M., relief day Monday; was required by management to attend an investigation. Dispatcher Timmons attended that investigation was released therefrom at 12.30 P. M. on the same date.

Dispatcher Timmons, in a letter dated May 28, 1945, addressed to the Division Operator, presented claim for eight (8) hours at the overtime rate of pay for attending investigation on April 30, 1945, his regularly assigned rest day. Claim was progressed by the Division Chairman to the Superintendent and was denied. A joint submission of the claim was made by the Superintendent and the Division Chairman to the General Manager on September 4, 1945. Conference thereon was held in the office of the General Manager on November 14, 1945 and claim was denied by the General Manager in a letter dated December 8, 1945, addressed to the Assistant General Chairman.

The General Manager is the chief operating officer of the Carrier designated to handle disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

And, in Award No. 134, your Honorable Board (with Referee Spencer) found that "work" as that term is commonly used in Agreements in the railroad industry means work of the type to which the employe is regularly assigned, and does not apply to special service such as attending an investigation.

It is apparent, therefore, that, unless there are rules or interpretations to the contrary, "work", or "service", as referred to in an Agreement does not relate to time spent in attending an investigation. As stated above, the parties to the Agreement on this railroad have never reached any interpretation thereof which would support the contention of the Employees in the instant case.

In Regulation 4-F-1 the parties to the Agreement made the only provision which they considered necessary to cover situations in which train dispatchers attended investigations, and the compensation the parties contemplated would apply in such instances was the payment of such time as they might lose from their regular assignment as a result thereof. They clearly intended that, when train dispatchers attended investigations on their rest days or at other time outside their regular working hours, they should receive no compensation therefor.

It is respectfully submitted, therefore, that, since the Claimant did not suffer any loss in compensation as a result of attending the investigation of April 30, 1945, Regulation 4-F-1 of the Agreement provides that the claim is not payable.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employe in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION: The Carrier has shown that the Claimant was not required to lose time from his regular assignment when he reported for investigation on his relief day, April 30, 1945.

Therefore, the Carrier respectfully submits that, under the Agreement, the Claimant is not entitled to the compensation he claims and respectfully requests your Honorable Board to dismiss the claim of the employe in this matter.

OPINION OF BOARD: The facts are not in dispute. Train Dispatcher E. J. Timmons, regularly assigned Train Dispatcher, with the Carrier at a monthly rated salary, tour of duty 12:00 midnight to 8:00 a. m., relief day Monday, was required by Carrier to attend an investigation on his rest day as a witness.

The rules of the applicable regulations relied upon by the Employees are:

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

"4-B-1 (a). The monthly rates of pay specified in the Rate Schedule comprehend six (6) days' work per week."

"4-C-1. (In part) (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. * * *"

"(b) The term 'rest day' as used in this Regulation (4-C-1) means * * * 48 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'. * * *"

Regulation (4-F-1) provides:

"Train Dispatchers required to attend court, inquest or investigation by direction of the Company will not be required to suffer a loss in compensation. Necessary expenses will be allowed when away from headquarters. Witness fees and mileage will be remitted to the Company."

Employees contend Regulation 4-C-1 requires a rest day for Train Dispatchers and further provides if a Train Dispatcher is required to perform service on his rest day, he will be paid at the rate of time and one-half; that rule 4-B-1 (a) limits a Train Dispatcher's assignment to a maximum of six (6) days per week and comprehends that assignment; that Regulation 4-F-1 has its place in the Agreement and is applicable with respect to any day on which a Train Dispatcher might be prevented from performing his regularly assigned duties, for which he would be compensated under Regulation 4-B-1 (a); that the Regulation is a guarantee against loss in compensation by Train Dispatchers who are required to attend court or investigations, etc.

The Carrier's contention is that Regulation 4-F-1 is the only regulation governing attendance at court or investigations by Train Dispatchers and is definite and specific; that the Claimant suffered no loss in compensation as a result of attending the investigation as he did not lose time from his regular assignment; that there is nothing in the rule that indicates it was intended that an employe should receive compensation for attending an investigation when the employe did not lose time from his regular position.

The Carrier has applied the term "to perform service" as meaning work of a Train Dispatcher which the "Dispatcher regularly performs". With respect to Regulation 4-B-1 (a), the Carrier contends that 4-C-1, as interpreted by the Employees, would render Regulation 4-F-1 meaningless.

In determining this claim under the Regulations cited and the respective contentions of the parties, we are not materially assisted in the previous awards of this Division. The precise issue has not heretofore been determined by this Board. The awards with reference to employes attending investigations at the direction of the carrier are in conflict. In awards where there was no rule respecting investigations and the employes sought to be paid under the Call Rule in effect, claims were denied. In Awards 409, 487, 605, 773, 1032, the term "work", as used in the collective bargaining agreements of the railroad industry, has been construed to mean work of the type to which an employe is regularly assigned. See Award 134. In Award 2824, where an employe claimed pay under the Call Rule, and there was

no rule with reference to attending investigations, the claim was sustained, cited Awards 588, 1545, 2032 and 2223. There are also a class of cases, where the employe by rule is paid a certain amount for attending investigations such as Award 2132, where the claimant was instructed to attend an investigation on Sunday, his day of rest, Rule 6—Sunday and Holiday Rule—was relied on. The claim was denied, the reason given—the attendance of an employe at an investigation or at court constitutes the exceptional case and is work performed outside his regular duties. In Award 2512, claim for attending investigation was based on the Call Rule. The claim was denied. On the premise, the greater number of awards held attendance upon investigations does not constitute “work” in the contemplation of the basic Overtime and Call Rules. Other awards where the claims were denied for attending investigations based on Call or Overtime Rules are Awards 3089 and 3230.

The only purpose of the foregoing brief review of some of the awards is to disclose the apparent conflict with respect to them.

In the case before us, we believe the nature of the claim, the circumstances and the contract are different than those determined in previous awards on this subject. Our function is to interpret the agreement with respect to the cited Regulations as they apply each to the other to determine the intent of the parties.

It will be observed under Regulation 4-A-1, “Eight (8) consecutive hours ‘service’ * * * shall constitute a day’s work”; 4-B-1 (a), “The monthly rates of pay specified in the Rate Schedule comprehend six (6) days’ work per week.” Proceeding to Regulation 4-C-1 (a), and for brevity not repeating it, we find that after performing Train Dispatchers’ work six (6) consecutive days, the Train Dispatcher is entitled to and required to take one regularly assigned day off per week as a rest day. The reason for this requirement, apparently, is based on the nature of the work. Returning to Regulation 4-C-1 (a), if the regularly assigned Train Dispatcher is required to perform service on the rest day assigned to his position, he is entitled to time and one-half pay. There is an exception in the Regulation; that is, when unavoidable emergency prevents furnishing relief, he then may be used. Here, there was no unavoidable emergency. Section (b) of the Regulation has heretofore been stated and is plain as to its applicability. In Regulation 4-F-1, Train Dispatchers required to attend * * * investigations by direction of the Company will not be required to suffer loss in compensation. What is meant by the language “will not be required to suffer loss in compensation”. Regulation 4-F-1 is not clear in what the quoted language means. What is meant by “service”, “to perform service”, or “work”, as used in the foregoing regulations. While the words “work” or “service” are difficult of distinction, the word “service” is broader in scope. “Service” is any function performed for the benefit of another, a benefit or advantage conferred, or use and advantage in general. In considering the Regulations here involved, we believe “service” as used therein, means any service rendered the Carrier, and when service as here defined is rendered the Carrier by a Train Dispatcher on his required rest day, to which under the Regulation he is entitled, he will not be required to suffer loss in compensation. This holding is confined solely to the factual situation in this case. For the reasons given herein, the claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 claim should be sustained in accordance with the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.