

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(a) The Chicago and North Western Railway Company, hereinafter referred to as "the Carrier," failed to comply with the provisions of the currently effective Agreement between the parties, particularly Rules 3, 4 (c), (1) and (2), and 5 thereof, when it refused and continues to refuse to pay the claimants referred to in subparagraphs (1), (2), and (3) hereof the amounts to which they were entitled for attending classes for re-examination on Operating Rules.

(b) The Carrier shall now pay to:

(1) Train Dispatcher C. R. Morris three (3) hours' compensation at the rate of \$4.306 per hour for being required by the Carrier to attend Re-examination on Operating Rules Class from 4:30 P. M., until 7:30 P. M., on January 27, 1955, a rest day regularly assigned to his position.

(2) Train Dispatcher W. M. Pendell, three and one-half (3½) hours' compensation at the rate of \$4.306 per hour for being required by the Carrier to attend Re-examination on Operating Rules Class from 9:30 A. M., until 1:00 P. M., on January 26, 1955, which was outside the hours of his regular assignment.

(3) Train Dispatcher P. R. Lister, compensation in the amount of \$13.99 which the Carrier had paid him because it required him to attend Re-examination on Operating Rules Class from 8:30 A. M., until 11:45 A. M., on January 27, 1955, which was outside the hours of his regular assignment, but which amount the Carrier subsequently deducted from his salary check covering payment for service rendered during the last half of April, 1955.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of September 16, 1950. A copy

they hold—are based upon their fitness and ability to discharge the duties and responsibilities reposed in them; and to these considerations their very seniority rights are subordinate. It is the privilege of every employe to maintain his qualifications for his present employment and to prepare himself for promotion. It is an indubitable truth that if men are coddled, led, and not only paternalistically encouraged but actually paid to equip themselves for the responsibilities desired to be entrusted to them, the achievement of self-reliance, intelligence, and strength of character is more frequently thwarted than attained.”

As will be noted by this Board in its Award 773 it determined that the employes for whom the claim was there presented were entitled to be paid their expenses in traveling to the point at which the examination was held. The claimants in this case were regularly assigned as train dispatchers in the Chicago Terminal District, and the examination was in fact conducted at the Chicago Passenger Terminal where they worked. It is therefore the understanding of the carrier that the claimants did not incur any expenses in connection with their re-examination and the question of expenses is therefore not involved in this case.

It is the position of the carrier that there is no rule in the agreement that provides for payment to train dispatchers for time spent in re-examination on operating rules; that such re-examination is for the benefit of the employes as much as for the benefit of the carrier; and that this Board has consistently and correctly held that time spent in the examination or re-examination on operating rules is not time worked, nor should it be paid for. The carrier therefore submits that the claim presented should be denied in its entirety.

All information contained herein has been previously been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

OPINION OF BOARD: The facts in this record are not in dispute. Claimants were directed to attend one of several scheduled classes for re-examination on Carrier's Operating Rules on hours outside of their regular assignment and, in one instance, on a regularly assigned rest day. There was no charge of incompetence or question concerning qualifications with respect to any of the Claimants.

The Employes contend that the individual Claimants rendered service for the benefit of the Carrier in accordance with Carrier's instructions during hours other than those within their respective regular assignments. That such service is compensable under Agreement rules. Employes further contend and it is not denied that if Claimants had disregarded Carrier's instructions they would have been subject to disciplinary action. Carrier was put on notice that when Claimants complied, claims such as we have here would be asserted.

In support of their position employes maintain that Carrier failed to comply with Rules 3 (Hours of Service), 4 (c) sub (1) and (2) Overtime with respect to "Calls" and 5 (Work on Rest Days). These rules provide for time and one-half for "work" or "service" performed in excess of eight consecutive hours or on a "rest day."

The Carrier contends that the taking of rules re-examinations does not constitute "work" or "service" as that term is used in the applicable schedule rules. Carrier also asserts that there is nothing in the Agreement before this Board which precludes it from requiring train dispatchers from undergoing periodic re-examinations on rules. Carrier further asserts that this Division has long held to the principle that a Carrier has a right to promulgate and enforce rules or instructions not in conflict with negotiated rules.

There is no conflict in the awards of this Division on the question of whether attending rule re-examination classes constitutes "work" or "service"

as those words are used in the rules here involved. Careful examination of other awards cited are not found to be applicable to the situation existing in this docket. We have held that attending rules re-examination classes is not the "work" or "service" referred to in the applicable rules which could give rise to a valid claim for overtime payments. Awards 773 and 487.

Whether or not we feel that appropriating an employe's time in this manner, absent of course a specific rule, is fair or just is not for us to say for this Board does not sit as a court of equity. We are limited to interpreting the applicable Agreement provisions as they stand. It would be exceeding our statutory function to allow compensation where the Agreement itself does not authorize it. We do not believe it to be the prerogative of this Board to attempt to do so by reading into the rules something that is not there. We feel that the employe's recourse is to negotiate with the Carrier under Section 6 of the Railway Labor Act.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.