

Award No. 1831

Docket No. TD-1833

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for the re-establishment of title and restoration of rate of pay for Night Chief Dispatcher, Plattsburg, N. Y., which title and rate of pay was abolished on October 1, 1940, and that Dana B. Hanks and all those adversely affected by this action be reimbursed by the Carrier for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Dana B. Hanks held the position of Night Chief Dispatcher in the Plattsburg, N. Y., office since July 1, 1918, and for some years prior to October 1, 1940, was paid a rate of \$305.00 per month.

On September 21, 1940, the Chief Dispatcher notified the Division Chairman and Mr. Hanks, but not the General Chairman, that the position of Night Chief Dispatcher would be abolished effective October 1, 1940, and for Mr. Hanks to assert his seniority to any position to which he was entitled by reason thereof.

Mr. Hanks did not displace on another position when notified that his position of Night Chief Dispatcher was abolished. He continued on his assignment of Night Chief Dispatcher, with hours from 7:00 P. M. to 3:00 A. M., until October 1st, 1940.

On September 26th, 1940, the Chief Dispatcher advertised a new trick train dispatchers position, hours 7:00 P. M. to 3:00 A. M., salary \$260.00 per month, to be effective October 1st. Mr. Hanks was assigned to this new position with same hours until August 18, 1941 when the hours were changed to 5:00 P. M. to 1:00 A. M.

The hours of the newly created trick train dispatcher position were the same as had been those of the Night Chief Dispatcher. The duties of the new position are in all major respects the same as those performed by Mr. Hanks under the title of Night Chief Dispatcher, but with the addition of the duty of dispatching trains on what is termed "North End" which includes Chateaugay Branch, Main Line Plattsburg to Rouses Point and Napierville Junction Railroad.

In fact, Mr. Hanks remained on the same job which up to October 1, 1940, was titled Night Chief Dispatcher, with a rate of pay of \$305.00 per month, but effective October 1, 1940, the title was changed to that of trick train dispatcher, with the added duties of dispatching trains on a part of the railroad known as the "North End" and at a salary of \$260.00 per month.

in fact less arduous than those assigned other trick dispatchers in the same office. The contention of the organization is not based on fact and is a direct misrepresentation of conditions as they actually exist.

In handling case on the property, organization laid stress on need for position. It is desired to point out that when night chief dispatcher's position last existed in the Plattsburg office, the hours of assignment were from 7:00 P. M. to 3:00 A. M. No night chief dispatcher was on duty from 3:00 A. M. to 7:00 A. M., which is the busiest time of night at this point. Further, no night chief dispatcher positions are in existence on this property nor does the need for such positions exist.

On August 6, 1941, an additional clerk's position was created and on September 24, 1941, an additional telegrapher and clerk's position was established, both assigned to the dispatching office at Plattsburg. As set out in Statement of Facts, this action has relieved trick dispatchers at this point of practically all report work, with the exception of a few minor items that are part of their prescribed duties and take but a comparatively short time to perform.

Earlier this year a similar case was appealed to your honorable Board and is carried in your files under Docket Number TD-1558. The Carrier submits the argument and evidence presented in Docket Number TD-1558 to also sustain its position in the instant case.

The organization makes charge that the General Chairman of the American Train Dispatchers Association was not given five days' notice of abolishment of the position of night chief dispatcher at Plattsburg. From a highly technical standpoint this may be true but it is a matter of record, concurred in by the organization, that the Local Chairman of the American Train Dispatchers Association was given ten days' notice of the Carrier's intention to abolish this position. The intent of rule to acquaint organization with move, previous to effective date, was therefore clearly complied with.

In conclusion, it is desired to emphasize assignment of duties, both prior to and following abolishment of night chief dispatcher's position, as set out in Statement of Facts. It is clearly shown that the duties of the train dispatcher's position being filled by Mr. Hanks differ in no respect from those assigned other train dispatchers. The Carrier emphatically states that the duties and responsibilities of the former night chief dispatcher, Plattsburg, N. Y., no longer exist, either from the viewpoint of supervision or responsibility and assigned duties. The Carrier further contends it has the right to abolish a position at any time such position is no longer necessary and no portion of the duties and responsibilities that justified the title and rate continue to exist.

If the position of the employes is sustained, all trick dispatchers employed on this Railroad could rightfully contend they are also entitled to the night chief dispatcher's rate for the reason that the duties and responsibilities of all trick dispatchers on the property are similar.

OPINION OF BOARD: This is a claim of the American Train Dispatchers Association that the Delaware and Hudson Railroad Corporation, carrier involved here, on October 1, 1940 abolished the position of night chief dispatcher at Plattsburg, New York, in violation of the controlling agreement between the claimant and carrier, that the position should be restored and that Dana B. Hanks, who held the position and all those adversely affected thereby be reimbursed for the loss sustained by the abolition of the position.

It is agreed that the position was abolished, and that thereafter only trick dispatchers were on duty at night.

The terms of the agreement, together with its attached and agreed schedule of rates of pay, which is properly a part of the agreement, confirms the fact that on the date of its execution there were at this office, be-

sides the chief dispatcher, the following recognized dispatchers' positions with the monthly rates of pay set opposite the positions:

1 night chief	\$305.00
2 first trick	260.00
1 second trick	260.00
1 third trick	260.00
1 relief	260.00

When the position of night chief was abolished, a new night trick position was bulletined and it was bid in and assigned to Hanks. The assigned hours of this position were 7:00 P. M. to 3:00 A. M. with a salary of \$260.00 per month. The change represented a saving to the carrier of \$45.00 per month. Later the hours were changed to 5:00 P. M. to 1:00 A. M. except that on Monday the hours were from 4:00 P. M. to midnight on another territory from the same office. The hours of night chief, until the position was abolished, were from 7:00 P. M. to 3:00 A. M. In addition it is claimed that Hanks, in his new position, performed substantially the same duties as in that of night chief dispatcher.

The claimant contends that under the agreement and schedule the carrier was without right to abolish the position of night chief dispatcher so long as the duties of the position remained, and that such duties could not be transferred to a trick dispatcher without violation of the agreement.

In the schedule wherein the positions at Plattsburg, New York and others, are listed the following is found:

"It is understood that the above positions and rates continue only so long as the necessity for the position exists."

We must assume from the fact that, at the time the agreement, with its appended schedule, was entered into necessity did exist at Plattsburg for the position of night chief dispatcher, otherwise the position would not have been included.

A further reasonable, and we think inescapable, assumption is that necessity for the continuance of the position exists unless and until it is shown competently that such necessity does not longer exist. A mere abolition of the position and creation of a new trick dispatcher's position by the carrier is not a sufficient showing of a lack of such necessity.

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 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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1942.