

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

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

(1) That the International-Great Northern Railroad Company violated the rules of the Dispatchers' Agreement when it refused to establish a regular six (6) day relief position in the San Antonio office on Sept. 12, 1942, as required by Article III (b).

(2) That the Carrier violated Article III (d), when it required regularly assigned dispatchers in that office to double the territory to provide relief on Sunday for the occupants of two (2) positions established in that office September 12, 1942, working No. 1, 3:30 A. M. to 11:30 A. M., and No. 2, 3:30 P. M. to 11:30 P. M.

(3) That the extra dispatcher entitled to this work shall now be paid for three (3) additional days per week from date violation commenced on Sept. 12, 1942, until it was corrected on Nov. 17, 1942, and

(4) That Dispatcher J. T. Moore, occupant of one of the two (2) positions above, be paid one day account of being required to take Sunday off as rest day after above violation was corrected, having only performed three (3) days' service.

EMPLOYES' STATEMENT OF FACTS: This grievance and claim have been progressed in the usual manner under the rules of the agreement between the International-Great Northern Railroad Company and the American Train Dispatchers Association, effective August 1, 1925. The decision of the highest officer designated for that purpose, denying the claim, is submitted as Exhibit TD-1. The carrier was notified by letter dated February 10, 1943 that the claim would be appealed to the National Railroad Adjustment Board.

Also submitted and made a part hereof are Exhibits TD-2, TD-3, TD-4, TD-5, TD-6, TD-7 and TD-8.

Under date of September 10, 1942 Trainmaster Fretwell issued Bulletin SA-1 (Exhibit TD-3), reading as follows:

Vacancies exist for three (3) train dispatchers, San Antonio office, as follows:

Position No. 1, 3:30 A. M.—11:30 A. M., Laredo Subdivision
Position No. 2, 3:30 P. M.—11:30 P. M.
Position No. 3, swing job—6 days per week.

of each train dispatcher relieved, as provided for in Article III (c), quoted in the Carrier's Statement of Facts and inasmuch as the Agreement was complied with, the extra dispatcher is not entitled to three additional days per week as claimed by the Dispatchers' Association.

Item (4) sets up claim that extra dispatcher J. T. Moore, occupant of one of the two (2) positions referred to in Item (2), be paid one day account of being required to take Sunday off as rest day **after the alleged violation was corrected**. The Carrier has no record of any claim having been filed by Dispatcher J. T. Moore or the Dispatchers' Association indicated in this item. By referring to the Division Chairman's letter to the Superintendent dated September 14, 1942, it will be noted that the following statement is made: (See Carrier's Exhibit No. 1):

"After the split set of dispatchers was established in the San Antonio Office and the men were placed on their positions and later changed resulted in the loss of one day to dispatcher J. T. Moore account being required to take Sunday off as a rest day after having only performed three days service."

On September 10, Dispatcher J. T. Moore was regularly assigned to work six days per week except Sunday and did not work September 13, as that was his regularly assigned rest day and it is assumed that the loss of one day to dispatcher J. T. Moore, referred to in the above statement, was Sunday, September 13 and as the Carrier designated Sunday as his regularly established rest day, as provided for in Article III (e), he is not entitled to be paid for a day lost. The claim as set up in Item (4) is for the payment to Dispatcher J. T. Moore for one day account required to take Sunday off as rest day subsequent to November 17. This is verified when Item (3) is taken into consideration in which statement is made by the Organization that the violation of the Agreement which they alleged occurred was corrected on November 17, 1942 and it is the position of the Carrier that the claim should be dismissed for the reason that your Honorable Board is without jurisdiction. By referring to copy of correspondence attached hereto as Carrier's Exhibit No. 1, it will be found that claim covered by Item (4) has not been handled with the Carrier by the representatives of the Organization.

The Carrier contends that Article III (b) and Article III (d) were not violated as alleged by the Train Dispatchers' Association in Items (1) and (2) and that, therefore, the extra dispatcher is not entitled to three additional days claimed in Item (3) and your Honorable Board is respectfully petitioned to deny the claim and inasmuch as the claim of Dispatcher J. T. Moore, covered by Item (4), has not been handled in accordance with the provisions of the Railway Labor Act, his claim should be dismissed.

OPINION OF BOARD: Prior to Sept. 12, 1942, there was one set of three dispatchers in the San Antonio office working the entire Taylor-San Antonio-Laredo territory and branches, with an extra dispatcher working three days a week relieving them. On that date two additional dispatchers were added for what was bulletined as the "Laredo Subdivision," which apparently included all territory except that between Taylor and San Antonio; they worked daily except Sunday, their hours of service being 3:30 A. M. to 11:30 A. M. and 3:30 P. M. to 11:30 P. M., respectively.

This arrangement continued until Nov. 17th when the Carrier assigned another dispatcher so as to provide a second full set with tricks the same as those of the first set. The new set took over the Laredo Subdivision for the entire day, thus entirely replacing, as to that subdivision, the first set during the eight hours through which since Sept. 12th it had been handling both subdivisions. At the same time the extra dispatcher was put on a six-day basis, relieving all six dispatchers in turn.

The three claims are (1) that in the interval between Sept. 12th and Nov. 17th the extra dispatcher should have been relieving the two Laredo Subdivision dispatchers as well as the original three, just as after Nov. 17th he relieved all six dispatchers; (2) that since the first set of dispatchers furnished the relief for the Laredo Subdivision men on Sundays, there was a doubling of territory for relief purposes, in violation of Rule III (d); (3) that but for this doubling, five days of relief service per week would have been necessary to relieve the five men, thus entitling the relief dispatcher to a regular six-day assignment under Rule III (b).

It is apparent that on Sundays the first set of dispatchers did relieve the two Laredo Subdivision dispatchers, so far as concerns the two shifts worked by the latter on the other days of the week. It is true that they also performed the work of the Laredo Subdivision on week days between the shifts of the two Laredo Subdivision dispatchers; but the fact remains that during those two shifts there was a division of the territory, and that on Sunday the territories were doubled for relief purposes as to those two shifts.

It follows that Rule III (d) was also violated, and that the first three claims should be sustained.

The fourth claim complains "that Dispatcher J. T. Moore, occupant of one of the two (2) positions above, be paid one day account of being required to take Sunday off as rest day after above violation was corrected, having performed only three (3) days' service." The violation was corrected on Nov. 17th, as above noted, and there is no evidence in the record to show that Moore was required to take any Sunday off after that time, his assigned day off then being Wednesday.

It is apparent from the letter of the Division Chairman dated Sept. 14th, 1942, and from other information in the record, that what was originally complained of was Moore's assignment on Sept. 10th to the new position, with Sunday as his day off. Assuming that this claim can be considered in spite of the form in which it now appears, and in spite of the variation from the form in which it was handled direct with the Carrier, there is nothing at all in the record to indicate what was his last day of rest prior to that assignment, or how many days he worked immediately prior to Sunday, Sept. 13th. The record indicates that he was assigned to the new position on Sept. 10th and began working it on Sept. 12th, and thus worked only one day in that position before his day of rest. His prior service is not shown, and we cannot tell whether the claim was based upon a failure to distinguish between his assignment three days before, and his assumption of the work one day before, his rest day, or upon an assumption that he worked only two days upon some prior assignment before entering upon this one. His last prior day of rest is not shown. Thus, even if we can conclude that Rule III (a) is intended to guarantee six days of work per week instead of one day of rest per week, which latter seems to be its obvious purpose, and that it guarantees those six days of work before there can be one day of rest, for which we find no support in the wording of the rule, nor in the argument or awards cited, we must nevertheless deny the fourth claim as unsupported by the evidence.

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 violations have been proved as to Claims (1), (2), and (3) but not as to Claim (4).

AWARD

Claims (1) and (2) sustained. Claim (3) sustained to the extent of any wage loss resulting to claimant by reason of the violations found in regard to Claims (1) and (2). Claim (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1944.