

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: I Claim of the American Train Dispatchers' Association that the Southern Pacific Company (Pacific Lines) did not comply with the intent of Article 2, Section (a-1) and (a-2) and second paragraph Section (b), Train Dispatchers' Agreement effective October 1, 1937, when it failed

- A. To compensate Assistant Chief Train Dispatcher R. B. Read of the Tucumcari, New Mexico office in accordance with Article 2, Sections (a-1) and (a-2), for four (4) hours at rate of time and one-half for service performed as Assistant Chief Train Dispatcher from 4:00 P. M. to 8:00 P. M., Saturday, September 18, 1943, and failed
- B. To compensate Assistant Chief Train Dispatcher R. B. Read in accordance with Article 2, second paragraph Section (b) for four (4) hours at rate of time and one-half for service performed as Assistant Chief Train Dispatcher from 4:00 A. M. to 8:00 A. M., Friday, September 24, 1943.

If Train Dispatcher R. B. Read shall now be paid for eight (8) hours at rate of time and one-half for service performed as Assistant Chief Train Dispatcher on the dates mentioned in Items A. and B., respectively, as is required by Article 2, Sections (a-1) and (a-2), and second paragraph Section (b), Train Dispatchers' current Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the Southern Pacific Company (Pacific Lines), and the American Train Dispatchers' Association, governing the hours of service and working conditions and rates of pay for Train Dispatchers, effective October 1, 1937.

Article 1, Section (b) of this Agreement reads as follows:

"Definition of Chief, Night Chief, and Assistant Chief Dispatcher's Positions.

"These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

Article 2. Sections (a-1), (a-2), (a-3), and (b) read as follows:

granted to the regular occupant under the letter of understanding of September 13, 1937, namely, another day off or a day added to his vacation at his election.

The only circumstance under which extra allowance may accrue to chief train dispatchers who are excepted from scope and provisions of the current agreement, is that provided in the letter of understanding dated September 13, 1937, as follows:

"... should an emergency necessitate their working on their assigned relief day, while no extra compensation will so accrue, the Management gave assurance that arrangements will be made whereby they will be given another day off duty, either at their election or added to their vacation allowance."

It has not been the practice on this carrier's property nor is the carrier committed to allow additional compensation to chief train dispatchers, on the basis contended for by the petitioner, for service such as was performed on the dates set forth in the claim.

That the work performed by the claimant on September 18 and 24, 1943, was not work prohibited to chief train dispatchers, under the scope rule or any other rule of the agreement, is evidenced by this Division's Award 481, involved a dispute between the petitioner involved in this docket and the Great Northern Railway. In the opinion of said Award the Division, speaking through Referee Millard, stated:

"In the opinion of the Board there is little doubt but that, in its proper interpretation, Rule 1 of the agreement was intended to apply to offices where the services of two or more of the classes of employees designated in the rule were utilized; and that the exemption of one Chief Dispatcher in each office from the provisions of the schedule was intended to cover the services of one, out of two or more employees working under the classifications indicated during the same assigned hours, to serve in an executive or supervisory capacity.

"Nothing however is indicated in Rule 1, or in any other rule of the agreement which might tend to prohibit the Chief Dispatcher from performing any of the duties usually performed by other classes of employees designated in the rule, provided that no other employee be displaced by such action."

The scope rule of the agreement involved in Award 481 was substantially the same as the scope rule (Article 1) of the agreement.

The petitioner relies (see statement of claim) on Article 2, Sections (a-1) and (a-2) of the agreement in support of the claim for September 18, 1943, and Article 2, second paragraph, Section (b) of the agreement in support of claim for September 24, 1943. Having conclusively established that none of the provisions of the agreement were applicable to the claimant while he was filling the position of chief train dispatcher from September 8 to 30, inclusive, 1943, no basis exists for a consideration of said agreement provisions.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is entirely without basis and therefore respectfully submits that it should be denied.

OPINION OF BOARD: In the Chief Dispatcher's office at Tucumcari, New Mexico, a force was maintained consisting of one Chief Dispatcher and two Assistant Chief Dispatchers. Claimant Read was regularly assigned to the position of Assistant Chief Dispatcher, hours 4:00 P. M. to 12:00 midnight. During September, 1943, Read was directed to perform the duties of the Chief Dispatcher, Mattingly, who was on vacation. In addi-

tion to performing the Dispatcher's work, hours 8:00 A.M. to 4:00 P.M., Read was required on September 18, 1943, to perform Assistant Chief Dispatcher's work from 4:00 P.M. to 8:00 P.M. On September 24, 1943, he was again required to perform Assistant Chief Dispatcher's work from 4:00 A.M. to 8:00 A.M. in addition to the Chief Dispatcher's work. It is the position of Claimant that he is entitled to compensation as an Assistant Chief Dispatcher at rate of time and one-half for the periods of service of four hours each hereinbefore described.

By the provisions of Rule 1 (a) of the current Agreement and a letter of understanding dated September 13, 1937, one Chief Dispatcher in each train dispatching office who is not assigned to perform trick train dispatcher's service, is excepted from the provisions of the agreement. It is not disputed that Chief Dispatcher Mattingly was excepted from the Agreement. The Chief Dispatcher was paid a monthly salary which includes all duties and responsibilities of the position. No overtime is paid him for time worked in excess of eight hours or for work performed on his relief day. It is the contention of the Carrier that Read in performing the work of the Chief Dispatcher, an excepted position, was no longer within the scope of the Agreement and consequently in no position to invoke the overtime provisions in it contained.

We do not think the Carrier's position can be sustained. The rule plainly says that the exception shall apply to not more than one chief dispatcher on any division and the letter of understanding makes it clear that only one chief train dispatcher in each train dispatching office is excepted from the agreement. Chief Dispatcher Mattingly, though on vacation, was the occupant of the chief dispatcher's position and excepted from the Agreement. If we accept the contention of the Carrier that Read in performing the duties of the position was also excepted, then we would have two chief dispatchers excepted from the position at the same time in direct violation of the Agreement. We are of the opinion that under this rule, so long as the chief dispatcher's position is occupied, the occupant of the position only is excepted from the agreement and any employee relieving him for any cause would be subject to the provisions of the Agreement. This construction of the Agreement is supported by Award No. 2905.

The Carrier cites us that part of the letter agreement of September 13, 1937, which reads: "The same conditions will apply to train dispatchers while temporarily filling these positions." This provision applies only when the excepted position is vacant and temporarily filled by the Carrier. Under such circumstances the temporary occupant of the position is excepted and he must perform the work on the same basis as a permanent occupant of the position outside the scope of the Agreement. Such a construction makes effective the requirement of the rule that only one chief train dispatcher in each train dispatching office is excepted from the Agreement.

The Carrier also urges consideration of that part of the letter of understanding dated September 13, 1937, providing in substance that should a chief dispatcher be required to work on his relief day because of an emergency that, although additional compensation could not be paid he would be given another day off duty or an added day to his vacation allowance. This has no application to the situation before us. The Claimant was not working on his relief day. He was working overtime on a regular assigned day and, being under the Agreement, the overtime provisions of Rules 2 (a-2) and 2 (b) of the current Agreement apply.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the carrier and the employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement as alleged.

AWARD

Claims I and II sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of June, 1945.