

**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: (1) Claim of the American Train Dispatchers Association that the Southern Pacific Company (Pacific Lines) did not comply with Sections (a-1) and (a-2) of Article 2, Train Dispatchers' Agreement effective October 1, 1937, when it failed and refused to pay B. J. Skipper, Tucumcari, New Mexico office, at rate of time and one-half for four (4) hours' service as Chief Dispatcher from 8:00 A. M. to 12:00 Noon on Friday, May 5, 1944, which service he performed after completing his eight-hour tour of duty as Assistant Chief Dispatcher.

(2) B. J. Skipper shall now be paid the additional compensation at rate of time and one-half to which he is entitled under the provisions of Sections (a-1) and (a-2), Article 2, 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 employes; 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:

"HOURS OF SERVICE—OVERTIME—CALLS

Basic Day

(a-1) Eight (8) consecutive hours shall constitute a day's work.

Overtime

(a-2) Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis. (Mediation agreement, effective April 1, 1942.)

Transfer Time

(a-3) The term 'time required to make transfer,' as used in item (a-2) above, includes the time it is necessary for the train dispatcher

involved, or for any other claim seeking payment of time and one-half. The position of chief train dispatcher not being covered by the agreement, therefore, none of the provisions of the agreement are applicable to said position or the occupant thereof. The agreement being inapplicable the petitioner would therefore be without right or basis in presenting a claim on behalf of such occupant based on the provisions of the agreement. The sole basis for the presentation of a claim by the petitioner is the provisions of the agreement; however, the agreement being in no way applicable, it follows that no basis would exist for the petitioner presenting a claim on behalf of the occupant of said position.

That the carrier's position in the matter is correct is conceded by petitioner's general chairman in his letter June 4, 1944, wherein he stated in part:

"It may be that the meaning and intent of the 'Letter of Understanding' of September 13th, 1937, is being applied by the Superintendent in this instance. I have no objection to this interpretation but want to call your attention to the fact that, should this be your decision, an additional allowance of one half day will be demanded, off duty, to be given at Dispatcher Skipper's election or added to his vacation."

(Emphasis ours)

The Division will note the contradictory position of the petitioner; on the other hand, the petitioner contends that the claimant is entitled to receive an additional allowance, to the extent of payment of time and one-half under the terms of certain rules of the agreement, yet on the other, it is admitted that the carrier's division superintendent applied the meaning and intent of the letter of understanding of September 13, 1937, namely, that the position of chief train dispatcher which the claimant occupied from 8:00 A.M. to 12:00 noon May 5, 1944, was excepted from the provisions of the said agreement. It is difficult to reconcile the petitioner's anomalous position.

The general chairman's statement, (in his letter of June 4, 1944), that in the event the superintendent's application of the letter of understanding of September 13, 1937 (that the position of chief train dispatcher was excepted from scope and provisions of the agreement), was recognized by the assistant manager of personnel, a demand would be made on behalf of the claimant for an additional allowance of one half day off duty at his election or added to his vacation, manifestly, does not warrant consideration. That there is no justifiable basis for that demand is conclusively established by that portion of the said letter of understanding which stipulates that the allowance of time off duty or added vacation allowance would be allowed to chief train dispatchers, or train dispatchers temporarily filling positions of chief train dispatchers, **only when required in an emergency to work on their assigned relief day**—a condition that did not exist in the instant case.

The petitioner relies (see statement of claim) on Article 2, Sections (a-1) and (a-2) of the agreement in support of the claim presented. Having established that none of the provisions of the agreement were applicable to the claimant while he was filling the position of chief train dispatcher on May 5, 1944, 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: Train Dispatcher Skipper was the regularly assigned relief train dispatcher employed to relieve regularly assigned train dispatchers on their weekly rest days at Tucumcari, New Mexico. On May 5, 1944, Skipper was required to work as an Assistant Chief Dispatcher, hours 12:00 midnight to 8:00 A.M., due to the illness of the incumbent of the position. He was then required to work the position of Chief Train Dispatcher, hours 8:00 A.M. to 12:00 Noon, due to the illness of the regularly appointed Chief Train Dispatcher. Skipper claims compensation at the rate of time and one-half for the four hours worked as Chief Train Dispatcher.

The regular occupant of the position of Chief Dispatcher was excepted from the current Agreement. It is the contention of the Carrier that as Skipper was performing the work of the Chief Dispatcher, an excepted position, that the Agreement with the American Train Dispatchers' Association has no application and that no obligation to pay the overtime rate arises.

We fully resolved this contention against the Carrier in Award No. 2943, Docket No. TD-2954. In that award we said "so long as the Chief Dispatcher's position is occupied, the occupant of the position only is excepted from the Agreement and any employe relieving him for any cause would be subject to the provisions of the Agreement." See also Award No. 2905. For the reasons stated in Award No. 2943, TD-2954, a sustaining award is justified.

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 Employe involved in this dispute are respectively carrier and employe 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 (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson
Secretary

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