

Award No. 2985

Docket No. TD-2918

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that the Denver & Rio Grande Western Railroad Company failed to comply with the requirements of Article 7 (b) of the Dispatchers' Agreement effective January 1, 1943, when it failed and refused to pay Relief Train Dispatcher R. E. Dengler, Salida, Colorado office, at assistant chief dispatcher's rate for service performed on September 22 and 23, 1943, October 13 and 14, 1943 and November 3, 4, 10 and 11, 1943.

(2) Dispatcher Dengler shall now be paid the difference between trick train dispatcher's rate, which he was paid, and assistant chief dispatcher's rate, which he is entitled to under the provisions of Article 3 (c) and Article 7 (b).

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the Denver & Rio Grande Western Railroad Company, Wilson McCarthy and Henry Swan, Trustees, and the American Train Dispatchers Association, governing the hours of service, working conditions and rates of pay of Train Dispatchers, effective January 1, 1943.

Rule 1—SCOPE, reads in part as follows:

"(a) The rules contained in this agreement apply to assistant and/or night chief, trick, relief and extra train dispatchers, but do not apply to chief train dispatchers other than as specified in Rules 3-(e) and 4."

Rule 3—REST DAYS—RELIEF SERVICE, reads in part as follows:

"(a) Each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half. An extra train dispatcher required to work seven consecutive days as a train dispatcher will be paid time and one-half for service performed on the seventh day.

(c) Where relief requirements regularly necessitate four (4) or more days relief service per week, relief train dispatchers shall be employed, regularly assigned and compensated at rate applicable to positions worked. When not engaged in dispatching service, they shall be assigned to other service as may be directed by the proper supervisory officer and shall be paid for such service at rate applicable to trick train dispatchers.

The rule provides that:

"Where relief requirements regularly necessitate four (4) or more days' relief service per week, relief train dispatchers shall be employed, regularly assigned and compensated at rate applicable to positions worked. * * *

There being more than four days' relief service per week at Salida, Mr. Dengler was assigned, as result of seniority, to the relief train dispatcher's position and was compensated, as the rule provides,

"at rate applicable to positions worked. * * *

In other words, when Mr. Dengler worked as trick dispatcher, he was compensated at the trick dispatcher's rate, and when he performed the duties of assistant chief dispatcher, he was compensated at the assistant chief's rate. Likewise, when he performed other service as he was required to do—each Monday when possible—he was compensated at trick train dispatcher's rate in accord with the last sentence of Rule 3 (c) reading:

"When not engaged in dispatching service, they shall be assigned to other service as may be directed by the proper supervisory officer and shall be paid for such service at rate applicable to trick train dispatchers."

In conclusion, the Carrier contends there is nothing in Rule 7 (b) that has application to relief train dispatchers. The Carrier further contends that Rule 3 (c) is controlling in this dispute and there is nothing in this rule which guarantees Mr. Dengler or any other relief train dispatcher anything over and above the rate of pay of the employe he relieves or for the class of service he actually performs.

OPINION OF BOARD: The claim of the Dispatchers is for the payment of the difference between the Trick Dispatcher's rate and the Assistant Chief Dispatcher's rate for services performed on September 22 and 23, October 13 and 14, and November 3, 4, 10 and 11, all in the year 1943, by R. E. Dengler.

The Claimant was the Relief Train Dispatcher and was regularly assigned to that work by the Carrier under his seniority rights.

Under Rule 3 (c) of the Contract, it was agreed that "relief train dispatchers shall be employed, regularly assigned and compensated at rate applicable to positions worked."

Under Rule 7 (b) a Train Dispatcher required to work on lower rated assignments is entitled to receive the same rate as if working his regular assignment.

The regular assignment of the Claimant made him the Assistant Chief Train Dispatcher for two days each week. On those days he was entitled to the rate of pay of an Assistant Chief Train Dispatcher.

When he was placed in the position of Third Trick Train Dispatcher on the days when his regular assignment called for him to act as the Assistant Chief Train Dispatcher, he was entitled to the rate of pay of his regular assignment instead of the rate for a Third Trick Dispatcher under Rule 7 (b), the pertinent part of which is, in substance, set out above.

The claim should be allowed.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.