

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: 1. Claim of the American Train Dispatchers Association that the Great Northern Railway Company violated paragraph 3-(a) of the Mediation Agreement (Case A-1122-A) of March 14, 1942, to which this carrier is a party, when it failed and refused to pay Assistant Chief Dispatcher H. F. McMaster, Great Falls, Montana office, when relieving position of Chief Train Dispatcher, at rate of time and one-half, Chief Dispatcher's rate, for service performed on November 11, 1944, which was the rest day assigned to the regularly assigned position of the said H. F. McMaster.

2. Assistant Chief Dispatcher H. F. McMaster shall now be paid the difference between pro rata rate, Chief Dispatcher's rate, which he was paid, and time and one-half Chief Dispatcher's rate, to which he is entitled under the provisions of paragraph 3-(a), Mediation Agreement (Case A-1122-A) of March 14, 1942.

EMPLOYEES' STATEMENT OF FACTS: In the Great Falls, Montana Dispatchers' office of the carrier, Claimant McMaster, during the period of the claim, was possessor of a regular assignment as Assistant Chief Dispatcher with the following weekly assignments:

Monday	—	Assistant Chief Dispatcher	4:00 P.M. to 11:59 P.M.
Tuesday	—	" "	" "
Wednesday	—	" "	" "
Thursday	—	" "	" "
Friday	—	" "	" "
Saturday	—	Assigned Rest Day	
Sunday	—	Chief Dispatcher	8:00 A.M. to 4.00 P.M.

On Wednesday, November 8, 1944, Mr. McMaster was required by the carrier to relieve the regularly appointed incumbent Chief Dispatcher, Mr. Murphy, and continued service as follows:

Wednesday, November 8th	—	Chief Dispatcher
Thursday, November 9th	—	" "
Friday, November 10th	—	" "
Saturday, November 11th	—	" "
Sunday, November 12th	—	" "
Monday, November 13th	—	Assistant Chief Dispatcher
Tuesday, November 14th	—	" "
Wednesday, November 15th	—	" "
Thursday, November 16th	—	" "
Friday, November 17th	—	" "

provisions of the Chief Dispatcher's rate of pay which is not controlled in any way by the agreement, and it is, therefore the belief of this Carrier that since neither agreement or practice covers such proceeding, it not only is not a requirement of the Dispatchers' agreement but also would be a violation of law to pay time and one-half the Chief Dispatcher's rate to anyone without the approval of the National Railway Labor Panel.

If such allowance were to be considered proper, it would be just as logical for Mr. McMasters, if used temporarily as Trainmaster or even as Division Superintendent, to claim payment at time and one-half the rate of the Trainmaster or Superintendent for time worked on the relief day applying to his position as Assistant Chief Dispatcher and we cannot conceive of your Board supporting such an obviously absurd position. The protection afforded by the rules of any agreement must of necessity be confined in their application to the positions and rates of pay covered by such agreement since any other procedure carried to logical conclusions could lead only to chaos and conflict between agreements covering different classes or groups of employees.

It is, therefore, the position of the Carrier that it afforded the full protection of the agreement to Mr. McMasters in agreeing that he was entitled to be paid time and one-half the rate of pay of the position occupied by him covered by the agreement, namely, Assistant Chief Dispatcher, for working the assigned relief day of such position and that the request for the application of time and one-half to the rate of pay of Chief Dispatcher which is admittedly not covered by the Agreement is not justified by either rule or practice and, therefore, could not be made, even if we desired to do so, without government approval.

OPINION OF BOARD: The Claimant held a regular assignment as Assistant Chief Dispatcher in the office of the Carrier at Great Falls, Montana. On Saturday, November 11, 1944, his regularly assigned rest day, he was required to work the position of the Chief Dispatcher, a position excepted by the current Agreement. Claim is made for compensation at time and one-half the Chief Dispatcher's rate of pay. The Carrier denied the claim for the reason that the Chief Dispatcher's position was excepted from the Agreement and offered to pay the Assistant Chief Dispatchers' rate at time and one-half or the pro rata rate of the Chief Dispatcher's position, whichever was the greater. We think the claim must be sustained on the basis of Awards 2905, 2906, 2943, 2944 and 2986. The Carrier concedes the applicability of these awards as precedents but urges that important factors were overlooked in their determination and asks that they receive further consideration by this Division.

The Scope Rule (Rule 1, current Agreement) provides:

"The term 'Train Dispatcher' as herein used shall be understood to indicate chief, assistant chief, trick, relief, and extra dispatchers, except that one chief dispatcher in each dispatching office shall be exempted from the provisions of this schedule. Such chief dispatcher, however, shall retain, acquire and accumulate seniority as a train dispatcher, and in the event of his demotion shall return to the office from which promoted and exercise his seniority as provided by Rule 12."

It is evident that the positions of Chief Train Dispatchers are covered by the Agreement except that one Chief Train Dispatcher in each dispatching office is excepted therefrom. We think this means that the occupant of one Chief Train Dispatchers' position is not covered by the Agreement. In the instant case, Mr. Murphy was the occupant and incumbent of the Chief Dispatcher's position. There can be but one occupying the position at a time. If such position became vacant by resignation, removal or death, the employee succeeding to his duties would be occupying the excepted position, whether his assignment was temporary or permanent. But when the regularly assigned Chief Train Dispatcher continues to occupy the position, one performing the duties of the position in his stead is not occupying an excepted position within

the meaning of the rule. Consequently, in the case before us, Murphy is the occupant of the excepted position and the Claimant, although performing the duties of Chief Train Dispatcher, is doing so under the terms of the Agreement. Claimant is entitled to be paid at the rate of the higher rated position and, having been called on his regularly assigned rest day, he is entitled to the penalty rate of time and one-half.

Carrier makes a point of the fact that the compensation of an excepted position is fixed arbitrarily by the Carrier and not by negotiation. We fail to see where it makes any difference whether the compensation of a position is fixed one way or the other. The Agreement contemplates that work performed on one's rest day shall be on the basis of time and one-half of the rate of the position worked. The manner in which the rate was set up does not appear in any manner to affect the application of the rule.

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 the Carrier violated the Contract as alleged.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1946.