

Award No. 3344

Docket No. TD-3402

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee.

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railway Company violated the intent of Article 3(a) of the Agreement, effective August 1, 1945; entered into between this Carrier and the American Train Dispatchers Association, when the Carrier required Train Dispatcher A. E. Upson of the Pueblo, Colorado, office to perform service as Chief Train Dispatcher on November 19, 1945, the latter being the rest day assigned to Mr. Upson's regular position, and that

(b) The Carrier shall now compensate Train Dispatcher Upson at the rate of time and one-half, of the rate of the position, in which he performed service on November 19, 1945, as is required by Article 3(a) above mentioned, instead of the pro rata compensation he was paid for that day.

EMPLOYEES' STATEMENT OF FACTS: An agreement on rules governing hours of service, compensation and working conditions was entered into between the parties to this dispute, effective August 1, 1945. Said agreement was in effect on the date this dispute arose. Article 3, Section (a) thereof reads:

"Each regularly assigned train dispatcher (and extra train dispatchers who perform six (6) 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 (7) consecutive days as a train dispatcher will be paid time and one-half for service performed on the seventh day." (Underscoring is ours for emphasis).

Mr. A. E. Upson was, at the time this claim arose, employed by this Carrier as a regularly assigned train dispatcher in its Pueblo, Colorado, office. His assigned hours were from 8:00 A.M. to 4:00 P.M. each day except Mondays. Mondays were the rest days assigned to his regular position.

The Carrier instructed Mr. Upson to, and he did perform service as chief train dispatcher (titled division trainmaster on this property) on Monday, November 19, 1945, which was the rest day for that week assigned to Mr. Upson's regular position, and for service on that day the Carrier compensated Mr. Upson at the pro rata rate instead of at the time and one-half rate of the position in which he performed service on that day.

the doing of the things which they have sought. They sought to have the Division Trainmaster relieved on his rest days by an employe from the dispatchers' roster. If the Carrier by complying with their request should incur penalties, then the Carrier could exercise its other options under Rule 1 in the appendix and either blank the position of Division Trainmaster on the rest days or refuse to give the Division Trainmaster his rest days and pay him therefor at the pro rata rate or permit the accumulation of the rest days, to be given him at some later period within one year at the Carrier's option. Certainly it is not believed that the Employes desire the Carrier to exercise such options when there are employes on the dispatchers' roster available to work the position of the Division Trainmaster on the latter's rest days.

In view of the foregoing, we respectfully submit that your Honorable Board should deny the claim.

CARRIER'S EXHIBIT A

American Train Dispatchers Association
Missouri Pacific Railroad
Coffeyville, Kansas

O. C. Walworth
General Chairman
1320 West Sixth Street

February 24, 1946

Mr. H. E. Roll, Chief Personnel Officer,
Missouri Pacific Railroad,
Missouri Pacific Bldg.,
Saint Louis 3, Missouri.

Dear Sir:

Re: Claim Dispatcher A. E. Upson
Pueblo, Colorado.

This refers to your letter of February 19, file TS-R 246-125 relative to above subject, declining our claim.

Article 3 (a) of our agreement provides for the method of payment to a regularly assigned train dispatcher who is required to perform service on the rest day assigned to his position. Mr. Upson was required to perform service on the rest day assigned to his position, by performing service as Division Trainmaster.

It is our position that Mr. Upson is entitled to time and one-half for service performed on his regular assigned rest day, as provided in Article 3 (a). Rule 1 of the Appendix does not contemplate that a regularly assigned trick dispatcher shall be used, on his rest day assigned to his position, for the purpose of providing relief service on the position of Chief Dispatcher.

Regret we cannot agree with your decision, and am turning the matter over to President O. H. Braese of the American Train Dispatchers Association for further handling.

Yours truly,

(Signed) O. C. Walworth
General Chairman.

OPINION OF BOARD: The facts in this case are not in dispute. The Claimant is a regularly assigned Trick Train Dispatcher and on Monday, November 19, 1945, the rest day assigned to his position, he was required to perform service as Chief Train Dispatcher. He was paid the sum of \$13.79, the amount representing one day's pay at the pro rata rate of the Chief Dispatcher's position (now entitled Division Trainmaster on the property).

The claim is based on Article 3 (a) of the Agreement in force, as follows:

"Rest Days

"Each regularly assigned train dispatcher (and extra train dispatchers who perform six (6) 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 (7) consecutive days as a train dispatcher will be paid time and one-half for service performed on the seventh day."

The Carrier resists the claim, declaring that Rule 1, "Rest Day, Vacation and Relief", appearing in the Appendix to the Agreement governs. This rule provides:

"Chief Train Dispatchers (now titled Division Trainmasters on this property (will be accorded two regularly assigned rest days per month and twelve (12) days vacation per annum with pay. When it is impracticable to accord them their relief days and they are required to work thereon, they shall be either paid therefor at pro rata rate or accorded accumulation of such time to be given at some later period within one year at the Carrier's option; and, further, that within sixty (60) days subsequent to the Proclamation by the President of the United States of the cessation of hostilities, they will be accorded one (1) relief day per week with pay (Leaving the annual vacation stand as at present). On such rest and vacation days, Chief Dispatchers' (Now titled Division Trainmasters on this property), positions, if filled, will be filled from the dispatchers' roster, if there are men thereon available, and they will be paid at the rate of the position relieved."

This rule is in accord with the letter of Agreement of August 7, 1945, which covers the subject matter contained in the rule and is the result of an Emergency Board's action.

The Agreement covers Chief Dispatchers (now titled Division Trainmasters on this property) only to the extent of the rules covered in the Appendix. Under the foregoing Rule 1 of the Appendix Division Trainmaster R. E. Allen was given his rest days, Sunday, November 18 and Monday, November 19, 1945. On these days he was relieved by Claimant.

The Carrier argues: That Rule 1 of the Appendix to the Agreement accords to Train Dispatchers the right to relieve Division Trainmasters during their vacations and on their rest days and this provision gives to the Trick Dispatchers as a class, the right to certain relief work for which they are paid at the rate of the position which they relieve; that all Division Trainmasters on this property are paid the same salary and no punitive rate for the position Division Trainmaster is existent; that the letter of understanding, dated August 7, 1945, specifies the daily rate to be paid individuals relieving Division Trainmasters on their rest days and vacation. Therefore, the Claimant was paid in accordance with Rule 1 contained in the Appendix to the Agreement. Exclusive of the Appendix to the Agreement he would have been paid at the rate of time and one-half for his services on his rest day. When he stepped outside of the position covered by all the rules of the Agreement he became subject, on a position covered by Rule 1 of the Appendix to the Agreement or any letter agreement pertinent thereto. That the purpose of Rule 1, Appendix to the Agreement, was to eliminate any disputes as to the rate of pay which should be applied to a Trick Dispatcher.

The awards cited by the Claimant do not deal with the exact situation in the instant case, due to Rule 1 of the Appendix to the Agreement, which rule is peculiar to this Carrier's system. However, the cited awards are pertinent

to the following effect: The Claimant did not become Chief Dispatcher by virtue of the fact that he performed service on that position on the day in question, and he relinquished none of his rights and privileges under the rules applicable to his regular assignment by the performance of such service.

After a careful consideration of the record we conclude that Rule 1, of the Appendix to the Agreement and the letter of understanding dated August 7, 1945, did not, nor intend to abrogate Rule 3 (a) of the Agreement as it affects the rights of the Claimant with reference to rate of pay as contained therein, when he would be required to work on his regular rest day. Rule 1 of the Appendix to the Agreement does determine the rate of pay for an employee selected from the Dispatchers' roster to temporarily fill the Division Trainmaster's position on his rest days or vacation period; such is the purpose of the rule, and that it accomplishes. However, should such a selected employee from the Dispatchers' roster be required to work as Division Trainmaster on his rest day, then for that day he is entitled, under Rule 3 (a) of the Agreement to be paid time and one-half, based on the rate of pay of the Division Trainmaster's position which he is temporarily assigned to and filling; on all other days during such assignment he is entitled to receive the rate of pay allotted to the position.

It is apparent Rule 1, of the Appendix to the Agreement nor the letter of understanding, does not change or modify Rule 3 (a) of the Agreement under the circumstances here presented.

With reference to Section (a) of the claim, there is no violation of the Agreement on the part of the Carrier in requiring the Claimant to perform service in the capacity of Division Trainmaster on the day in question.

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 employees within the meaning of the Railway Labor Act, as approved June 21, 1943;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as alleged in Section (a) of the claim.

AWARD

Claim (a) denied; claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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