

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

A position of assistant chief dispatcher be established in the Portland, Oregon office of this carrier in order that the duties described in Article 1-(b) of the current agreement might be performed by employees classified in accordance therewith, and that Train Dispatcher O. L. Jackson of the Portland, Oregon office be paid the difference between the amount he was paid for service performed as trick train dispatcher and the amount he could have earned as assistant chief dispatcher's rate subsequent to July 15, 1946, had the carrier complied with request of the employees, dated July 15, 1946, that a position of assistant chief dispatcher be established in the Portland office.

EMPLOYEES' STATEMENT OF FACTS: In the Agreement between the Southern Pacific Company (Pacific Lines) and its train dispatchers represented by the American Train Dispatchers Association effective October 1, 1937, and in the revised agreement between the above parties effective April 1, 1947 Article 1 (b) Definition of Chief, Night Chief, and Assistant Chief Dispatcher's Positions exactly similar in both agreements reads as follows:

"(b) 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."

In its Portland, Oregon office the Carrier on and prior to the date specified in this claim, i.e., July 15, 1946, maintained a position designated as Assistant Car Distributor, and continues to maintain such a position. The duties of the occupant of this position consist of issuing instructions on his own initiative to various offices and individuals involving the handling of trains and the distribution of power and equipment incident thereto and the performance of related work.

Under date of July 15, 1946 Claimant, Train Dispatcher O. L. Jackson of the Portland office, who was then and still is Division Chairman of the American Train Dispatchers Association at that point wrote the Carrier's Division Superintendent Hopkins the following letter:

"Your attention is called to attached message issued by the Car Distributor over the signature of Chief [redacted] per Love under

OPINION OF BOARD: At the outset it seems proper to make clear the fact that the claim herein is dual in character and that the two parts require separation and separate and independent treatment.

The first phase is a contention that a new position of Assistant Chief Dispatcher be set up in the Portland, Oregon office of the Carrier to take over the duties which were at the time claim was made, being performed by an employe denominated Assistant Car Distributor. The position of Assistant Car Distributor is controlled under the Clerks' Agreement with the Carrier.

The second phase is a contention that O. L. Jackson, an assigned Trick Train Dispatcher, not an occupant of the position of Assistant Car Distributor, was entitled to the difference between his pay as a Trick Train Dispatcher and the rate of pay of Assistant Chief Dispatcher subsequent to July 15, 1946.

The two phases of the claim will be considered in the order they have been stated herein.

The declared theory on which the Organization claims the right to have the new position established is that the designated Assistant Car Distributor is performing the substantial duties and functions of an Assistant Chief Dispatcher.

The duties and functions of an Assistant Chief Dispatcher are defined in Article 1 (b) of the controlling Agreement as follows:

"(b) These classes, (Chief, Night Chief, and Assistant Chief Dispatchers) 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."

It becomes necessary then to ascertain whether or not the Assistant Car Distributor was performing these defined functions. If he was not, of course the claim for establishment of a new position of Assistant Chief Dispatcher is groundless.

The facts, as disclosed by the showings of the parties, are that the Assistant Car Distributor did not supervise Train Dispatchers; that he was not made reesponsible for the movement of trains; and that he was not charged with the responsibility for distribution of power and equipment. It is these functions that by the scope rule of the Agreement sets apart Chief Dispatchers, Night Chief Dispatchers and Assistant Chief Dispatchers as a class. No others are or may be included in the class.

The Assistant Car Distributor probably did perform numerous and important administrative and ministerial functions under the control and direction of the Chief Dispatcher, and doubtless a substantial portion were without express or specific direction; but they were, nonetheless, within the supervisory capacity and responsibility of the Chief Dispatcher. All of the documentary evidence so indicates. All documents issued by the Assistant Car Distributor were issued over the initials of the Chief Dispatcher.

These things being true, it cannot be said that the occupant of the position of Assistant Car Distributor was performing the functions of an Assistant Chief Dispatcher. This conclusion requires a decision of the first phase of the claim favorable to the Carrier.

This decision on the first phase in fact amounts to a decision on the claim in its entirety favorable to the Carrier, but it appears in the light of the presentation that the second phase should be analyzed.

It is to be noted again that O. L. Jackson was not the occupant of the position of Assistant Car Distributor, but was an assigned Trick Train Dis-

patcher. It will also be noted that the claim is not on behalf of the occupant of a lower rated position who was required to perform service in a higher rated position for the difference between the rate of his assigned position and the one in which he was required to perform service, but was in effect a claim by one who claimed the right of assignment to the position with its rate of pay, had it been established.

It cannot be said on the record and the rules of the Agreement that the Organization established the right of Claimant to be assigned to the position, if it had been established.

The right would have depended on—(1) seniority—(2) ability—and (3) whether or not this Claimant chose to bid for the position. See Article 5 (b) and (f). If he had the requisite seniority, which is a fact not established, together with sufficient ability, he would have been eligible. It therefore has not been shown that he would have been entitled to the position had it been established.

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, 1934:

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

The claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of April, 1948.