Award No. 4012
Docket No. TD-4098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(a) The Missouri-Kansas-Texas Lines failed to comply with the requirements of Article III of the current agreement between the parties when it failed and refused to pay Train Dispatcher R. O. Morris, of the Parsons, Kansas office, while performing relief service in the position of chief train dispatcher, at the rate of time and one-half for such service performed by him on the rest day (November 11, 1947) assigned to Mr. Morris' regular position.

(b) Train Dispatcher Morris shall now be paid the difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled under the provisions of Article III of the agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. R. O. Morris at the time this claim arose was a regularly assigned train dispatcher in the Parsons, Kansas office, with one rest day (Tuesday) each week.

On Tuesday, November 11, 1947, which was the rest day assigned to his regular assignment, Mr. Morris was required by the carrier to work in the place of the chief dispatcher for which service the carrier paid him at the pro rata rate of the chief dispatcher position but, regardless of the intent of Article III of the Dispatchers' Agreement, dated June 19, 1937, as amended by Mediation Agreement (Case A-1122-A), dated March 14, 1942, failed and refused to pay him at rate and one-half for service performed on his rest day assigned to his regularly assigned position.

This claim has been handled up to and including the highest officer designated by the carrier for that purpose, whose letter denying the claim is attached as Exhibit TD-1.

POSITION OF EMPLOYES: Article III(a) of Dispatchers' Agreement, dated June 19, 1937, has been amended by Item 3-(a), of Mediation Agreement dated March 14, 1942, which provides:

> "3-(a) Effective April 1, 1942, each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service) will be entitled and required to take

Memorandum of Agreement No. DP-27, was not in effect when the dispute involved in Award No. 2905 arose and this is the first claim of this kind to our knowledge since that agreement became effective November 30, 1945. That agreement makes no distinction between extra or regular service as Chief Dispatcher, or between extra or regularly assigned Chief Dispatchers. It applies to the position or work of Chief Dispatcher, and not to any particular individual or personality. It does not provide for the payment of any service as Chief Dispatcher at the punitive rate, but clearly provides for the payment of all service as Chief Dispatcher on pro rata basis. During Mr. Morris' occupancy of the position of Chief Dispatcher he was subject to the provisions of Memorandum of Agreement No. DP-27, as to rates of pay, rules and working conditions for Chief Dispatchers, and not the current agreement applicable to train dispatchers. He was paid in accordance with Memorandum of Agreement No. DP-27 for the service he performed as Chief Dispatcher and, therefore, is not entitled to additional allowance claimed.

Memorandum of Agreement No. DP-27, provides Chief Dispatchers will be accorded twelve working days' vacation with pay each calendar year, and the time lost by the regular Chief Dispatcher account sickness in this case was applied against his vacation allowance. It was never contemplated or intended that the Carrier would be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu thereof, but payment of time and one-half, instead of straight time as claimed by Mr. Morris, in this instance, would have the effect of increasing the expense of the Carrier in granting vacation contrary to the spirit and intent of the Vacation Agreement.

During the time Mr. Morris occupied the position of Chief Dispatcher he received the benefits of a higher rated assignment and increased earnings, and suffered no loss of time or earnings account working on that assignment.

The interpretation of Article 3 (a) of the current Train Dispatchers' agreement of June 19, 1937, effective July 16, 1937 as amended by the Mediation Agreement of March 14, 1942, effective April 1, 1942, adopted in Award No. 2905 is not consistent with the real intent and purpose of that rule or paragraph (b) Article 3 of current Train Dispatchers' agreement, reading, in part:

> "A regular weekly rest day for each **position** shall be established, insofar as possible in accordance with the seniority choice of the men affected * * *." (Emphasis supplied.)

The regular weekly rest day established under the rules of the agreement, therefore, applies to the **position** and not to the **individual,** regardless of whether a regularly assigned train dispatcher performs temporary service on another assignment as train dispatcher or Chief Dispatcher. The real and only intent and purpose of Amended Article 3 (a) of the Train Dispatchers' agreement was to compensate a regular assigned train dispatcher at the rate of time and one-half for service performed on the assigned rest day of his position after performing full time service on his regular assignment, and not for service performed on a regular assigned work day when he is used on another assignment other than his regular assignment. Any other interpretation and application of the rules is impracticable so far as relieving employes on the regular weekly rest day for each position involved is concerned when a number of positions and employes are involved as result of changes account temporary absence of other regular employes.

The Carrier respectfully requests that the Board deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: From November 9 to 17, inclusive, 1947, on instructions of the Carrier, R. O. Morris, a regularly assigned Train Dispatcher with rest day on Tuesday of each week, performed relief service in the position of Chief Dispatcher in the Carrier's Parsons, Kansas, office during the

temporary absence of the regular occupant of that position on account of illness. Morris worked as Chief Dispatcher on the regularly assigned rest day of his position and the Organization, on his behalf, now claims he should be paid for that day at the rate of time and one-half instead of straight time as paid.

This claim is based upon the provisions of Article 3, Paragraph (a) of the current Train Dispatchers' Agreement as amended by Paragraph 3, Section (a) of Mediation Agreement Case A-1122-A, dated March 14, 1942, which provides:

> "3 (a). Effective April 1, 1942, each regularly assigned train dispatcher (and extra train dispatchers who perform six (6) consecutive days' dispatcher 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."

Also involved is the second paragraph of Section (c) of Article 3 of the Dispatchers' Agreement which reads as follows:

> "(Each dispatching position, including that of chief train dispatcher, shall constitute a relief requirement.)"

The parties agree the position of Chief Train Dispatcher at Parsons was not covered by the current contract, the scope rule of which excepted one Chief Train Dispatcher in each dispatching office not required to perform Trick Dispatcher's duties. The first paragraph of such rule reads:

> "The term 'train dispatcher' as herein used shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office, who will not be required to perform trick dispatcher's duties."

It is however conceded that from and after September 17, 1945, the Organization and the Carrier had executed, and there was in force and effect, a Memorandum of Agreement No. DP-27 recognizing the ATDA as the Chief Dispatchers' representative and covering their representation, rates of pay, rules and working conditions.

At the very outset in its submission the Carrier confesses that Award No. 2905 of this Division, involves a similar claim on the identical property and would in effect be stare decisis were it not for Agreement DP-27 which was not then executed and which it asserts strikes down the very foundation on which that decision is based.

Summarized, Award 2905 holds that the plain and unequivocal import of Article 3 (a) of the Dispatchers' Agreement is that a regularly assigned dispatcher is entitled to time and one-half for any work which he may be required to perform for the Carrier on any of the regularly assigned days of rest of his position and that when he works relief for a chief dispatcher on the assigned rest day of his own position he is entitled to such pay. It is our considered opinion the decision is sound and merits continued approval. That in so holding we are only being consistent is evidenced by repeated awards of the Division to the same effect. (See Awards 2905, 2943, 2944, 2986, 3096 and 3344.)

The gist of the Carrier's contention is that Memorandum Agreement No. DP-27, executed subsequent to the rendition of all Awards heretofore cited, made the Claimant, while occupying the relief position of Chief Dispatcher, subject to the rates of pay, rules and working conditions for Chief Dispatchers provided for by its terms and removed him from the coverage of the current agreement applicable to train dispatchers.

No useful purpose would be served in laboring the extended argument made by the Carrier in support of this contention. Neither is there anything to be gained by setting forth the contents of the instrument on which it relies. Whatever it contains, the short and simple, but even so, the over-all answer to everything Carrier has to say with respect thereto is that it overlooks the fact that notwithstanding the execution of Memorandum DP-27 there is nevertheless only one Chief Train Dispatcher in each dispatching office. All others are dispatchers. Likewise, it entirely ignores the repeated awards of this Division holding the fact a dispatcher performs temporary relief service as a Chief Dispatcher does not result in his becoming a Chief Dispatcher or lose him any rights and privileges under the rules of the Agreement applicable to his regular assignment.

In Award 3344 it is said:

> "That agreement makes no distinction between extra or regular service as Chief Dispatcher, or between extra or regularly assigned Chief Dispatchers. It applies to the position or work of Chief Dispatcher, and not to any particular individual or personality. It does not provide for the payment of any service as Chief Dispatcher at the punitive rate, but clearly provides for the payment of all service as Chief Dispatcher on pro rata basis."

To the same effect but in more detail is Award 2905 which states:

> " * * * it does not follow that Claimant acquired the position of Chief Train Dispatcher **by temporarily performing the duties** of that office during the absence of its incumbent. The construction contended for by the Carrier implies the concept that a regularly assigned train dispatcher without relinquishing his status as such may, by the act of the Carrier, be deprived of the protection which the Dispatchers' Agreement affords him. We find nothing in the Agreement to support this concept or its corollary namely, that of a regularly assigned train dispatcher temporarily performing the duties of a Chief Dispatcher is entitled only to the emoluments incident to the latter position notwithstanding a provision of the Agreement to the contrary." (Emphasis added.)

See, also, Award 2944, which reads:

> "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.' "

Likewise, Award 2986, where it is said:

> "While performing the duties of the Chief Train Dispatcher this relief man did not thereby cease to be controlled by the terms of the contract. He was, in effect, fulfilling its terms."

For other statements more lengthy in form but equally as emphatic as those heretofore quoted, see Awards 2943 and 3096.

Since Claimant never became a Chief Train Dispatcher he was covered by the current Dispatchers' Agreement, not by the terms of Agreement DP-27 as contended by the Carrier and is therefore entitled to pay under the provisions of Paragraph 3, Section (a) heretofore quoted.

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 Agreement as indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.