

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of B. C. Jones, Train Dispatcher, International-Great Northern Railroad Company, that:

(1) The Carrier failed to comply with the rules of agreements covering Train Dispatchers, and Chief Train Dispatchers (titled Division Trainmaster on this property) when on April 17 and 24, 1949, it failed to use Dispatcher B. C. Jones to effect rest day relief for the Chief Train Dispatcher at San Antonio; and when on April 13 and 20, 1949, it failed to use Dispatcher B. C. Jones to relieve the Night Chief Dispatcher at San Antonio on the rest days assigned to that position.

(2) Dispatcher B. C. Jones shall now be paid the difference between what he was paid and what he would have received had he been used to work the Chief Dispatcher (Division Trainmaster) position on April 17 and 24, 1949; and the difference in what he was paid and what he would have received had he been used to work the Night Chief Dispatcher position on April 13 and 20, 1949.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing working conditions, between the parties to this dispute was in effect at the time this dispute arose. A copy thereof is on file with this Board and is, by this reference, made a part of this submission as though fully incorporated herein. The scope of said agreement, pertinent to the instant dispute, reads as follows:

"(a) Scope—This Agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used shall include night chief, assistant chief, trick, relief, and extra train dispatchers. It is agreed that one Chief Train Dispatcher (now titled Division Trainmaster on this property) in each dispatching office shall be excepted from the scope and provisions of this agreement."

There also exists a letter-agreement, dated Palestine, Texas, May 1, 1948, signed by Mr. T. Short, Chief Personnel Officer of this Carrier, addressed to and accepted by Mr. G. P. Sowell, General Chairman, and approved by Mr. J. B. Tipler, Vice President, of the organization, which stipulates that the Carrier would require the chief train dispatcher (referred to in the exception of the scope rule, above quoted) to take one regularly assigned day off per

and Company alike, with the understanding that in the event of difference the Company's interest shall control."

The above quoted provisions are contained in the letter of May 1, 1948 for the express purpose of taking care of just such emergency situations as arose in this instance, and it was not practical under those circumstances to handle the situation other than was done. It would not have been practicable, and neither to the best interest of the men nor the Carrier to have used Mr. Jones as either Chief Dispatcher (Division Trainmaster) or Night Chief Dispatcher on the dates in question.

Aside from and in addition to Mr. Jones not being considered qualified for the position of Chief Dispatcher on the dates in question, attention of the Board is directed to the fact that two of the dates in question—April 17 and 24, were Sundays. It has previously been pointed out that Mr. Jones' regular position was Assistant Agent-Telegrapher at Hearne, a six-day-per-week position on which he worked Monday through Saturday, with Sunday his off day. Had Mr. Jones been used on the Chief Dispatcher (Division Trainmaster) position on Sunday, April 17 and on Sunday April 24, he would have been working on his regular off day. In other words, the Employees are taking the rather inconsistent position that the Chief Dispatcher (Division Trainmaster) should not have been permitted to work on his day off, and at the same time contend that Mr. Jones should have been used on his day off. In the final analysis, based upon the Employees' contentions and claim in this case, and assuming as contended by the Employees that Mr. Jones was qualified to work the position of Chief Dispatcher (Division Trainmaster), the controversy resolves itself into a question of whether it was more practicable, and the "best interest of men and Company alike" would have been served by using a regularly assigned Assistant Agent-Telegrapher, whose experience and ability in dispatching work was limited, on his day off, or the regular occupant of the Chief Dispatcher position, whose experience and ability were well and long established, on his day off.

Referring to the other two dates involved in this claim—April 13 and 20, on which it is contended that Mr. Jones should have been used on the position of Night Chief Dispatcher at San Antonio. Attention is again directed to the fact that Mr. Jones' regular assignment was Assistant Agent-Telegrapher at Hearne, assigned hours 9 A.M. to 6 P.M., Hearne is located 169.5 miles north of San Antonio. The hours of assignment of the Night Chief Dispatcher at San Antonio are 8 P.M. to 4 A.M. Mr. Jones could not have worked his assignment at Hearne and then been able to make himself available for service as Night Chief Dispatcher at San Antonio. Therefore, to have used Mr. Jones as Night Chief Dispatcher at San Antonio on April 13, would have necessitated relieving him at Hearne on April 12 and 14, the day prior and day subsequent to April 13, as well as on April 13; and to have similarly used him at San Antonio April 20 would have necessitated relieving him at Hearne on April 19 and 21, as well as April 20. In other words, in order to perform two days work as Night Chief Dispatcher he would have lost six days on his position of Assistant Agent-Telegrapher at Hearne, the inconsistency and impracticability of which is so obvious that further comment thereon would be superfluous.

When consideration is given to all the facts and circumstances involved in this case it is clearly evident that there is no justification, merit or basis whatever for the Employees' contention that Mr. Jones should have been used on either the Chief Dispatcher (Division Trainmaster) position April 17 and 24, or the Night Chief Dispatcher position on April 13 and 20, 1949. Therefore the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The Employees claim that the Carrier violated the Agreement between the parties when it failed to use Extra Train Dispatcher B. C. Jones to relieve the night chief dispatcher at San Antonio,

Texas on April 13 and 20, 1949, and the chief dispatcher in the same office on April 17 and 24, 1949, such dates being the regularly assigned rest days of the night dispatcher and the chief dispatcher, respectively, and that due to the violation, the Carrier must pay the claimant the difference between what he was paid on the days in question and the amount he would have earned had he been used to relieve the night chief dispatcher and the chief dispatcher.

The claimant was promoted to dispatcher on April 5, 1948. He was available as extra relief dispatcher but working as assistant agent-telegrapher at Hearne on a six-day-per-week position, working Monday through Saturday, Sunday being his off day. The chief train dispatcher had as rest day, Sunday, and the night chief dispatcher had as rest day, Wednesday.

We will consider this claim in two parts as the chief dispatcher is excluded from the effective Agreement but is covered by a letter as to rest days dated May 1, 1948. The night chief dispatcher is included in the Agreement.

As to the alleged violation of the Agreement as to the chief dispatcher, a letter of May 1, 1948, reading as follows is contained in the docket:

"Palestine, Texas, May 1, 1948

"Mr. G. P. Sowell,
General Chairman ATDA,
1404 N. Queen Street,
Palestine, Texas

Dear Sir:

"This is to advise that it will be our policy to continue our present practice or requiring Chief Train Dispatchers (now titled Division Trainmasters on this property and hereinafter referred to as Chief Train Dispatchers) to take one regularly assigned day off per week, except when unavoidable requirements of the service require them to be on duty.

"In affording the Chief Train Dispatchers relief days and vacations, or when such Chief Train Dispatchers are otherwise temporarily absent for one or more days, positions shall be filled from those covered by your Agreement, but the Carrier is privileged, if in its judgment necessary, to require that the position be filled by the dispatcher in that office whom it considers best qualified; qualifications being equal, the senior man will be given the preference. The question as to who shall fill such Chief Train Dispatcher positions shall be determined in each office in the best interest of men and Company alike, with the understanding that in the event of difference the Company's interest shall control. The train dispatcher so used shall suffer no loss in compensation in going to and returning from the Chief Train Dispatcher position.

"Train dispatchers who relieve Chief Train Dispatchers shall be compensated at the straight time daily rate of pay of the Chief Train Dispatcher's position for each day worked on such position on the same basis as Chief Train Dispatchers. To arrive at a daily rate, the Chief Train Dispatcher's monthly rate will be multiplied by 12 and the result divided by 313.

"Should a train dispatcher who relieves the Chief Train Dispatcher do so on the train dispatcher's regularly assigned rest day, he will be paid at the punitive rate of train dispatcher for the first day worked as a train dispatcher following his release from the Chief Train Dispatcher's position. Should a train dispatcher who relieves the Chief Train Dispatcher be required to work seven consecutive days as Chief Train Dispatcher without a rest day, he will be paid

at the punitive rate of train dispatcher when he returns to service as a train dispatcher following his release from the Chief Train Dispatcher's position for the number of days equal to the number of times he is required to work each period of seven consecutive days as Chief Train Dispatcher without a rest day. It is agreed that the requirements of Article 3 (a) of the Agreement are hereby modified for the purpose provided in this paragraph.

Yours truly,

/s/ T. Short,
Chief Personnel Officer.

Accepted:
/s/ G. P. Sowell
General Chairman—ATDA

Approved:
/s/ J. B. Tipler
Vice President—ATDA."

The pertinent part of this letter states that "but the Carrier is privileged, if in its judgment necessary, to require that the position be filled by the dispatcher in that office whom it considers best qualified; qualifications being equal, the senior man will be given the preference"; also, that "the Company's interest shall control".

The Carrier states that the claimant was not qualified to fill the chief train dispatcher's position and many Awards have held that this is a matter exclusively for the Carrier to determine, and such a determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary. Awards 2299, 2350. No such showing was made by the claimant. However, under the letter agreement, Carrier was obliged to fill the chief train dispatcher's position on his relief day. And in not so doing and allowing the chief dispatcher to work his rest day, the claimant was deprived of work as an extra train dispatcher and should be compensated for the day as he is obliged under the contract to protect all extra work under the Agreement or lose his seniority. This part of the claim will be remanded back to the parties to ascertain what amount of money is due the claimant for the work he should have received as extra train dispatcher on April 17 and 24, 1949, if the chief dispatcher had not been allowed to work his rest days.

As to part (2) of the claim, the night chief dispatcher is covered by the Agreement, and Rules pertaining to the alleged violation read as follows:

Article III (a):

"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."

Article IV (g):

"Extra dispatchers will be used in any office in line with their seniority when extra work is required and may bid in regular position in any office on the system. They may be used in other than dispatching service, but must be available and protect extra dispatching in any office."

The Carrier states that the claimant was not qualified to fill the night chief dispatcher's position on April 13 and 20, 1949. The claimant was qualified

as an extra train dispatcher on April 5, 1948, and he had to protect all extra work or forfeit his seniority. There are no qualifications defined in the Agreement of a night chief dispatcher or any dispatcher for that matter. When the Carrier failed to use this claimant on the nights of April 13 and 20, they violated the Agreement.

The Carrier also contends that it was impracticable to use the claimant as night chief dispatcher on April 13 and 20; also, that the claimant was not available for extra service on all dates in this claim and that the claimant could not be relieved due to the shortage of operators. All of these contentions have been reviewed by this Board and found not to be well founded and without merit.

The claimant shall be paid the difference between what he earned on April 13 and 20, 1949, and what he would have been paid if he had worked the night chief dispatcher's job.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier violated the terms of the Agreement as indicated in the Opinion.

AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.