

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Western Pacific Railroad Company, hereinafter referred to as the Carrier, did not properly apply the provisions of Agreement dated Chicago, Illinois, March 25, 1949, said agreement being by and between the participating carriers, one of which was the Carrier herein named, and represented by the Carriers' Conference Committee, and its employees represented by the American Train Dispatchers Association, when:

The Carrier failed and refused and continues to fail and refuse to apply the below quoted portion of Article III, Section 1, of said March 25, 1949, agreement to its chief train dispatcher positions covered by NOTE 1 of Rule 1 and Rules 3(a) and 3(f) of the Schedule Agreement between the Carrier and its train dispatchers represented by the American Train Dispatchers Association, effective August 1, 1942, viz:

"All existing agreements providing for one (1) rest day per week shall be revised so that effective September 1, 1949, they shall provide for two (2) regularly assigned rest days per week. Such assigned rest days shall be consecutive to the fullest extent possible. The Carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week."

(b) That the Carrier shall be required to properly apply to the chief train dispatcher positions above referred to, that portion of Article III, Section 1, quoted in above Item (a), as of the effective date set forth herein.

EMPLOYEES' STATEMENT OF FACTS: On or about July 26, 1948, the American Train Dispatchers Association served notices upon certain carriers, including the Western Pacific Railroad Company, requesting changes in certain rules and working conditions then in effect pursuant to the then existing schedule agreements and the provisions of the Railway Labor Act, as amended. Required conferences and negotiations were thereafter had on the respective properties without agreement being reached in respect to said notices. Thereafter, certain carriers, including the Western Pacific Railroad Company, designated and authorized certain committees to act for and on their behalf in negotiating an agreement to be applicable to all carriers party to such negotiations.

The excepted chief dispatchers were granted one rest day each week for at least fifteen years prior to effective date of the current agreement, August 1, 1942, but were allowed to accumulate their rest days when conditions existed to preclude their absence from work on the rest day. When a chief dispatcher was absent from his position, the position was filled by a qualified train dispatcher. Therefore, in negotiating the Train Dispatchers' Agreement effective August 1, 1942, Carrier agreed to write this into the agreement and Note 1 was added to the Scope Rule to cover the one (1) rest day allowed excepted chief train dispatchers. Had the excepted chief train dispatchers been covered by the agreement, Rule 3(a) would have governed and there would have been no necessity of adding Note 1, under the Scope Rule, which leaves no doubt that the employees recognized that Rule 3(a) did not apply to the excepted chief train dispatchers.

Carrier also agreed that the one weekly rest day would be a relief requirement and part of a relief train dispatcher's assignment as indicated in the second paragraph of Note 1, Scope Rule, and in Rule 3(f), to eliminate the accumulating of rest days by excepted chief dispatchers.

During the negotiations amending current agreement to apply the provisions of agreement made in Chicago March 25, 1949, covering the forty-hour week, the employees requested that Note 1, Scope Rule, be revised to grant the excepted chief train dispatchers two rest days per week, their contention being that Article III, Section 1 of agreement dated March 25, 1949, equally applied to excepted chief train dispatchers. When this request was refused on the basis of wording of current agreement and National Agreement of March 25, 1949, the employees then contended that Rule 3(a) applied to excepted chief train dispatchers. Were this correct, it is obvious that the addition of Note 1 in the Scope Rule in 1942 would not have been necessary. It is only by the provisions of Note 1 that Carrier is now required to assign one rest day each week as a part of a relief train dispatcher's assignment and nothing in the National Agreement of March 25, 1949, applied to positions not included within the Scope of the American Train Dispatchers Association's Agreement with Carrier. It is equally clear that the organization does not represent the excepted chief train dispatcher, an official position, under Rule 25 of current agreement in view of the definition of the term "train dispatcher" in Rule 1(a).

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the Association's contention that the Carrier did not provide two regularly assigned rest days per week for its chief train dispatcher positions in accordance with the provisions of its effective agreement as revised to comply with the Memorandum of Agreement entered into by the parties at Chicago on March 25, 1949.

Rule 1(a) of the parties' agreement effective August 1, 1942, generally excepted one chief train dispatcher in each office, who does not perform trick train dispatcher service, from its scope. However, Rule 3(f), which expressly includes the position of "chief train dispatcher," requires that such positions shall be given relief days as referred to in Section (a) of Rule 3. Rule 3(a) required one regularly assigned day off each week as a rest day and Rule 3(c) required that the superintendent establish such rest day for each position. Paragraph second of Note 1 to Rule 1(a) sets out this requirement for the purpose of establishing it as a part of the weekly schedule of work for relief train dispatcher assignments.

On March 25, 1949, these parties entered into an agreement at Chicago, Illinois, which, among other things, related to Rest Days. In so far as it related to Rest Days it was of course binding on the Carrier as to the positions of chief train dispatchers as that subject was expressly included in its agreement with the Association effective August 1, 1942.

The agreement of March 25, 1949, in so far as here material, provides:

"Section 1. Rest Days.

All existing agreements providing for one (1) rest day per week shall be revised so that effective September 1, 1949, they shall provide for two (2) regularly assigned rest days per week. . . ."

Pursuant thereto, on July 22, 1949, these parties entered into a Memorandum Agreement to conform the rules of their agreement effective August 1, 1942, with the provisions of the Chicago agreement of March 25, 1949. For this purpose Rule 3(a), to which Rule 3(f) directly refers, was changed to require two regularly assigned days off each week as rest days and Rule 3(c) was changed to require the superintendent to establish two rest days for each position.

While the failure to revise the second paragraph of Note 1 to Rule 1(a), which sets out that the assignment of a weekly rest day shall be made for the purpose of establishing it as a part of the weekly schedule of work for relief train dispatcher assignments, leaves some ambiguity in the rules as they relate to this subject, however, we do not think it is of such a character that it enables the Carrier to defeat the specific rules relating thereto, which are Rule 3(a), (c) & (f). These rules, as revised, fully carry out the intent and purpose of the Chicago Agreement of March 25, 1949 as it relates to the subject of "Rest Days."

We find that since September 1, 1949, Carrier has been obligated by the provisions of its agreement effective August 1, 1942, as revised July 22, 1949, to provide two regularly assigned rest days per week for all its chief train dispatcher positions.

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

That Carrier violated its agreement effective August 1, 1942, as revised by its Memorandum of Agreement signed July 22, 1949.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago Illinois, this 28th day of November, 1950.