

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS**

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

(a) The St. Louis Southwestern Railway Company did not comply with Section (b) of Article 2, Train Dispatchers' Agreement effective June 16, 1946, when on September 9, 10, 16 and 17, 1949 and on January 6, 1950 it failed and refused to pay regularly assigned relief train dispatcher, G. A. Morgan, for time worked in excess of eight (8) hours on each of the above dates.

(b) The Carrier shall now compensate Mr. G. A. Morgan at rate of time and one-half for overtime worked as follows:

Three (3) hours on September 9, 1949, and
Four (4) hours on each of the following dates—Sep-
tember 10, 16 and 17, 1949, and January 6, 1950.
Total—19 hours

EMPLOYES' STATEMENT OF FACTS: An Agreement, effective June 16, 1946, and revised effective September 1, 1949, between the St. Louis Southwestern Railway Company (including the St. Louis Southwestern Railway Company of Texas, Leased, Operated and Independent Lines) and the American Train Dispatchers Association, copy of which is on file with this Board is, by this reference, made a part of this submission as though fully incorporated herein. The scope rule 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 herein used shall include all train dispatchers except one Chief Train Dispatcher in each dispatching office, which position shall not be subject to any of the provisions of this agreement except Article 3; paragraphs a, b, c and j of Article 4; and paragraph e of Article 6."

to chief train dispatchers * * *." The claim for overtime resulted from an employe, who was relieving a chief dispatcher due to illness, being doubled over on position of assistant chief dispatcher, claim for overtime while working as assistant chief dispatcher was sustained. Here the rules and circumstances are quite different.

Thus the rules are plain and do not support the claim. As the Carrier understands, the Employes are asking in effect that the overtime rule be made applicable to the chief dispatcher two days a week or two-sevenths of the time, regardless of provisions in the agreement that the position is not subject to that rule. Instead of having one chief dispatcher in the office to whom the agreement does not apply, as provided in the rules, they are requesting that the agreement be so interpreted that there will be one such chief dispatcher in the office only five-sevenths of the time or five days in the week. This is equivalent to requesting a change in the rules contrary to the manner provided in the Railway Labor Act.

Under these circumstances, the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the Carrier's refusal to pay claimant, a regularly assigned Relief Train Dispatcher, time and one-half for time worked in excess of eight hours on the dates set out in the claim. On the dates for which claim is made claimant's regular relief assignment was relieving the Chief Train Dispatcher in the Ilmo, Missouri, dispatcher office on the regular relief days of that position. Claimant worked the hours for which claim is here made in excess of the regularly assigned hours of his relief position on the days for which claim is here made.

Article 1 a, Scope of the parties' Agreement, provides:

"This agreement shall govern the hours of service and working conditions of train dispatchers.

The term 'train dispatcher' as herein used shall include all train dispatchers except one Chief Train Dispatcher in each dispatching office, which position shall not be subject to any of the provisions of this agreement except Article 3; paragraphs a, b, c and j of Article 4; and paragraph e of Article 6."

Carrier contends that by reason of the foregoing the position of Chief Train Dispatcher at Ilmo, Missouri, is not within the scope of the Agreement and hence is not subject to its terms. In other words, it contends the relief man takes the position on which he relieves with all the conditions thereof attaching thereto.

This same contention is answered in Award 2905 of this Division as follows:

"* * * conceding that the Chief Dispatcher, whose position the Claimant was required to fill, was an official and that the position was not within the scope of the Agreement, 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."

And in Award 3344 of this Division it was held:

"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 the regular assignment by the performance of such service."

Other awards of this Division which throw additional light on the same subject, although the provisions of the agreements refer to the Chief Train Dispatcher as such and not to the position, are Nos. 2943, 2944, 2986, 3096 and 4012, although it is stated in the latter Award that: "The parties agree the position of Chief Train Dispatcher at Parsons was not covered by the current contract, * * *."

In view of what has been held by this Division in its former awards on the same subject we find claimant was entitled to the benefit of all the rules of the parties' agreement applicable to Train Dispatchers when he relieved the Chief Train Dispatcher. This includes Article 2 a and b. Consequently the claim should be sustained.

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

That Carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of January, 1951.