

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

NORTHERN PACIFIC RAILWAY COMPANY

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

(a) The Northern Pacific Railway Company acted contrary to the intent of Rule 6 (b) of the current agreement as revised, effective September 1, 1949, when it refused and failed to compensate Train Dispatcher A. B. Johnson by a determination of the daily rate of the position filled, by multiplying the regular monthly rate by 12 and dividing the result by 261 in accordance with the provisions of that rule, for rest day relief service, relieving the regularly appointed chief train dispatcher in its Tacoma, Washington, train dispatching office on September 4, 11 and 18, 1949.

(b) The Northern Pacific Railway Company shall now compensate Train Dispatcher A. B. Johnson for the difference between what he did receive for service on the chief train dispatcher position on the above mentioned dates, which compensation the carrier incorrectly based on Rule 6 (b) of the agreement, effective December 16, 1942, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 313, and the compensation to which he is entitled by the provisions of Rule 6 (b) as revised effective September 1, 1949, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 261.

EMPLOYEES' STATEMENT OF FACTS: In the existing agreement between the Northern Pacific Railway Company, hereinafter sometimes referred to as the Carrier and the American Train Dispatchers Association, hereinafter sometimes referred to as the Claimant, effective December 16, 1942, and revisions thereof, all of which are on file with your honorable Board and by this reference made a part thereof, the following rules are pertinent to adjudication to this dispute:

"SCOPE

Rule 1 (Effective December 16, 1942)

(a) The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatcher service; however, necessary relief of such chief train dispatchers because of absence from their positions, except where appointment of chief train dispatcher is made, will be performed by qualified train dispatchers from the seniority district involved.

(c) Definition of trick train dispatchers' positions: This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work. Such positions shall be designated as Class B positions.

(d) Train dispatcher service as above defined may be performed by chief train dispatchers referred to in Rule 1 (a); however, when a chief train dispatcher is regularly assigned to perform trick train dispatcher service such position will be governed by the rules of this agreement.

Sections (b) and (c) of this rule shall not operate to restrict performance of work to the respective classes therein defined."

Rule 1 (a) of the agreement effective December 16, 1942, excludes one Chief Dispatcher in each dispatching office from the scope of that agreement. This is precisely the number of Dispatchers' positions in each dispatching office that the Interstate Commerce Commission in its regulations, Ex parte 72, issued on February 5, 1924 said is in the status of official positions. This is also what the United States Railroad Labor Board in its decision, Misc. Case 666, said as to the status of Chief Dispatchers' positions.

The fact that the position of Chief Dispatcher is excluded from the scope of the Dispatchers' Agreement effective December 16, 1942 is corroborated by the language appearing in Rule 1(a) in which exception provision is made for the performance of relief work on the Chief Dispatchers' position under certain circumstances by dispatchers included in the scope of the agreement which provision would not have been necessary if the position of Chief Dispatcher was not completely excepted from the scope of the agreement.

Rule 1 (b) defines Chief, Night Chief and Assistant Chief Train Dispatcher's positions; Rule 1 (c) defines Trick Train Dispatchers' positions. It will be observed that Rules 1 (b) and (c) specifically deal with positions. This makes it perfectly plain that the position of Chief Dispatcher is excepted from the scope of the Dispatchers' Agreement.

The Carrier has shown that one Chief Dispatcher's position in each dispatching office is excepted from the scope of the Dispatchers' Agreement effective December 16, 1942.

The facts in this docket show that there is one Chief Train Dispatcher's position classified as such maintained in the dispatching office at Tacoma, Washington. The occupant of this position is not regularly assigned to perform Trick Train Dispatcher service. Therefore, in the application of Rule 1 (a) of the Dispatchers' Agreement effective December 16, 1942, the occupant of this position, be it the regular assigned Chief Dispatcher or the Dispatcher relieving the Chief Dispatcher, is excepted from the scope of the Dispatchers' Agreement.

As the Chief Dispatchers' position at Tacoma, Washington, is excepted from the scope of the Dispatchers' Agreement, it follows as a matter of course that the rules of that agreement do not apply to this position and this includes Rule 6 as well as any other rule of that agreement. The position of Chief Dispatcher at Tacoma, Washington, being excluded from the scope of the current Train Dispatchers' Agreement and Rule 6 having no application in determining the method of calculating the rate of pay of the Chief Dispatchers' position, the claim of Mr. Johnson must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is brought by the American Train Dispatchers' Association on behalf of Train Dispatcher A. B. Johnson and is premised on the proposition that the Carrier erroneously paid the claimant

for September 4, 11 and 18, 1949, when he relieved the Chief Train Dispatcher on the latter's assigned rest days. For the work performed by the claimant, he was allowed payment at the daily rate of 1/313 of the Chief Train Dispatcher's annual salary. The Association contends that he should have been paid on the basis of 1/261 of the Chief Dispatchers' annual salary for each day of the days worked. The Petitioners' contention is based on Rule 6 (b) which reads as follows:

"(b) The daily rate of pay shall be determined by multiplying the regular monthly rate by twelve and dividing the result by 261."

The issue is thus resolved into a determination of whether Rule 6 (b) of the current Agreement is applicable in calculating the daily rate of a dispatcher when he fills the assigned rest day of the Chief Dispatcher. The position of the Carrier is that such provision of the Agreement does not so apply because the position of Chief Train Dispatcher is excepted from the Agreement under the provisions of Rule 1 (a). This rule reads, in part:

"Rule 1. (a) The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatcher service; * * *."

The Chief Train Dispatcher at Tacoma, Washington, where this controversy arose, was not regularly assigned to perform trick train dispatcher service.

The Agreement also provides in Rule 5 (a) as follows:

"(a) Where rest day relief requirements regularly necessitate four (4) or more days of relief service per week, relief train dispatchers will be employed and regularly assigned and compensated at rate applicable to position worked. * * *."

Prior to September 1, 1949, the method of computing the wage of the train dispatcher, when he relieved the Chief Dispatcher, was to make payment calculated on the daily rate of the Chief Dispatcher as determined by an annual salary and rest day basis. That is, the daily rate of the Chief Train Dispatcher was the monthly salary multiplied by 12 and the result divided by 365 days minus the rest days of the Chief Dispatcher. Before the 40 hour week rule, the rest days of the train dispatcher and the Chief Train Dispatcher were apparently the same in number.

After September 1, 1949, the number of rest days a week for a train dispatcher were increased from one to two; but at the time this claim arose, the Carrier had not assigned additional rest days to the Chief Train Dispatcher. Thus on the days in question, the daily rate of the Chief Train Dispatcher would be determined by the same formula as was done previously. But since September 1, 1949, the method of computing the basis of payment for train dispatchers has been changed (Rule 6 (b)).

The question now arises as to whether the train dispatcher is outside of the Scope of the Agreement when he relieves a Chief Train Dispatcher under the circumstances of this case. The Carrier contends the affirmative on the ground that, when the train dispatcher relieves the Chief Train Dispatcher, he is removed from the Scope of his Agreement because such position is expressly excepted there from the Scope Rule. We do not find, however, that the Agreement supports this contention.

The work performed in the position of Chief Train Dispatcher when he is absent is train dispatcher's work under Rule 1 (a) of the current Agreement. While one position in each dispatching office is excepted from the Agreement, such exception does not apply, under this rule, to train dispatchers who perform the work in the absence of the Chief Dispatcher. The language "shall include all train dispatchers **except one** chief train dispatcher in

each dispatching office who is not regularly assigned to perform trick train dispatcher service" clearly imports that only the one Chief Dispatcher not regularly assigned to a trick is excepted from the Scope.

Train dispatchers may perform the work of the excepted Chief Dispatcher but that does not change them from train dispatchers when there is one holding the appointment of Chief Dispatcher. On such days the relief train dispatcher may be acting Chief Dispatcher but he is yet a train dispatcher. Awards 2905, 3344, 5202. It should be noted that Rule 1 (a) excepts only "one chief dispatcher".

From the precedents of this Board and the language of the Agreement we must conclude that a train dispatcher regularly assigned to relieve a Chief Train Dispatcher is not removed on such days from the Scope of his Agreement.

This being so, then the rules of the Dispatchers' Agreement apply, and in particular the basis of payment is that established by Rule 6 (b) applied to the daily rate of the Chief Dispatcher calculated as indicated hereinabove. As this was not the method followed on the days in question, an affirmative award is in order.

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 Carrier violated the Agreement.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of March, 1951.