

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 provisions of Rule 4 (a) as revised effective September 1, 1949, and Rule 5 (c) of the current agreement effective December 16, 1942, when it failed and refused to use Train Dispatcher D. B. McGregor to fill the position of Chief train dispatcher in its Tacoma, Washington train dispatching office for second consecutive rest days on September 5 and 12, 1949.

(b) The Northern Pacific Railway Company shall now pay Train Dispatcher D. B. McGregor the difference between what he did receive for service as trick train dispatcher on the above dates and the chief train dispatcher's daily rate.

(c) The Northern Pacific Railway Company acted contrary to the provisions of Rule 4 (a) as revised effective September 1, 1949, and Rule 5 (c) of the current agreement effective December 16, 1942, when it failed and refused to use Extra Train Dispatcher W. C. Wallace to relieve Train Dispatcher D. B. McGregor in its Tacoma, Washington train dispatching office on September 5 and 12, 1949, in order that Train Dispatcher McGregor could be used to perform service relieving the chief train dispatcher in that office for second consecutive rest days as stated in section (a) of this claim.

(d) The Northern Pacific Railway Company shall now pay Train Dispatcher W. C. Wallace the difference between what he was paid as telegrapher and what he was entitled to as trick train dispatcher on September 5 and 12, 1949.

EMPLOYES' STATEMENT OF FACTS: In the existing agreement between the Northern Pacific Railway Company, sometimes hereinafter referred to as the Carrier and the American Train Dispatchers Association, sometimes hereinafter referred to as 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 of this submission, the following rules are pertinent to adjudication of this dispute:

"SCOPE

Rule 1. (a) The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in

application of Rules 4 (a) and 5 (c) of the current Dispatchers' Agreement to the position of Chief Train Dispatcher at Tacoma, Washington. The claim of Mr. Wallace of necessity must be sustained or denied on the merits of the claim of Mr. McGregor.

The Carrier has shown that the position of Chief Train Dispatcher at Tacoma, Washington is excepted from the scope of the current Dispatchers' Agreement and that consequently neither Rule 4 (a) nor Rule 5 (c) of that agreement is applicable in determining the number of rest days to be granted the occupant of this position; that the occupant of the Chief Train Dispatcher's position at Tacoma, Washington was not granted a rest day on the days on which Mr. Wallace claims that he was denied service as a train dispatcher. Neither Rule 4 (a) nor Rule 5 (c) gives Train Dispatchers covered by the current Dispatchers' Agreement any right to relieve the occupant of the position of Chief Train Dispatcher on days on which the occupant of that position is assigned to work.

As Mr. Wallace's claim that he should have been used to relieve Mr. McGregor so that Mr. McGregor could be used to relieve the occupant of the position of Chief Dispatcher on the days specified in the statement of this claim is not sustained by Rule 4 (a) or Rule 5 (c) of the current Dispatchers' Agreement which is relied on by the claimant, the claim of Mr. Wallace should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Association claims that the Carrier has violated the current Agreement, Rule 5 (c), for its failure to use a train dispatcher on a second consecutive rest day for the Chief Train Dispatcher at Tacoma. Only one rest day has been assigned by the Carrier to the Chief Train Dispatcher. Claim has been filed on behalf of Train Dispatcher McGregor because he was not permitted to fill such second consecutive rest day and on behalf of an extra train dispatcher for the Carrier's failure to relieve the regular train dispatcher so that he could be used to perform the service of so relieving the Chief Train Dispatcher.

The Rest Day Rule, as amended effective September 1, 1949, is set out in the foregoing joint submission. This is the provision of the contract that authorizes and fixes the rest days for the employees covered by the Dispatchers' Agreement. This rule determines the rest days for "regularly assigned train dispatchers" and "extra train dispatchers who perform five consecutive days dispatching service." By definition in Rule 1 (a), one Chief Train Dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatching service is excluded from "train dispatchers" whenever that term is used in the Agreement.

The position of Chief Train Dispatcher was occupied by a duly designated chief train dispatcher who was not assigned to perform trick train dispatching service.

It is apparent from the Rest Day Rule (Rule 4) that no provision has been made to designate any rest day for the position of one Chief Train Dispatcher. The Petitioners, however, rely on Rule 5 (c) which reads as follows:

"(c) Each train dispatcher position (including position of chief train dispatcher) shall be considered a rest day relief requirement; * * *."

This rule was not changed by the September 1, 1949, Agreement.

The provision relied on by the Petitioners is but a part of Rule 5 which is designated "Rest Day Relief Service." It, by itself, does not purport to establish rest days; that is the function of Rule 4. The purpose and intent of Rule 5 is to provide the relief service for positions for

which rest days have been established. The language of Rule 5 (c) authorizes relief service for the rest days of the Chief Train Dispatcher, but until and unless rest days for the employe holding such appointment are established there is no rest day service to perform.

The Agreement existing on this property on the effective date of the Chicago Agreement providing for the five day week did not provide for one rest day per week for the one Chief Train Dispatcher whose position, by reason of Rule 1, was excluded from the application of Rule 4 of the Agreement. As the Carrier had not, on the days for which the claims are here presented, established rest days for the occupant of the position of Chief Train Dispatcher at Tacoma, Washington, there were no rest days, as claimed, on which the regular relief train dispatcher could perform service. It must, therefore, follow that the claims are not valid.

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

The facts do not show a violation of the current Agreement.

AWARD

Claims (a), (b), (c) and (d) denied.

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.