

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: (Claim-H) Claim of the American Train Dispatchers Association, that:

(1) The Missouri Pacific Railroad Company violated the intent of its Letter Agreement dated December 6, 1947, and Article 1 and Article 3 of its current Agreement with the American Train Dispatchers Association when beginning on or about September 10, 1947, this Carrier used individuals who are not subject to this agreement and who were not entitled to such work, to effect the weekly rest day relief service of the chief train dispatcher, and the assistant chief train dispatcher at Jefferson City, Missouri, thereby depriving the regular relief train dispatcher of work which falls within the scope of these agreements.

(2) The Missouri Pacific Railroad Company shall now compensate Mr. L. B. Morse, the regular relief train dispatcher who, in accordance with the provisions of the above mentioned agreements, was entitled to perform that work, for all time lost by him by reason thereof.

EMPLOYEES' STATEMENT OF FACTS: An Agreement on rules governing rates of pay, hours of service and working conditions of train dispatchers and a Letter-Agreement dated December 6, 1947, pertaining to relief of Chief Train Dispatchers (titled Division Trainmasters on this property) between the parties to this dispute was in effect at the time this dispute arose. A copy of this Agreement and Letter-Agreement above referred to is on file with this Board and are, by this reference, made a part of this submission as though fully incorporated herein.

The pertinent part of Letter-Agreement above referred to reads as follows:

"This is to advise that it will be our policy to continue our present practice of requiring Chief Train Dispatchers (now titled Division Trainmasters on this property and hereinafter referred to as Chief 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 Chief Train Dispatchers relief days and vacations, or when such Chief Train Dispatchers are otherwise temporarily absent for one or more days, position shall be filled from those covered by your agreement, but the Carrier is privileged, if in its

POSITION OF CARRIER: It is the position of the Carrier that these claims are not properly before the Board.

The Carrier is without information in its files or in the Statement of Claim which enables it to know the exact nature of the claim. It is not understood why these claims should have been filed with the Adjustment Board without first going through the regular procedure and channel of appeal on the property. It is believed that the Carrier can rightfully assume that the Train Dispatchers' Organization, upon realizing that there was no merit to the claims filed for all time train dispatcher positions were abolished, is now attempting to use those claims as a basis for progressing claims to this Board on an entirely different basis because the Organization also realizes that it failed to have dispatchers file claims for the days and amounts shown in the Statement of Claim within the time limits rule of the agreement—Article 8, paragraph (f). In other words, the Dispatchers' Organization is assuming it has the right to present claims to this Board by making a change in the bases of claims and thus defeat the real intent and purpose and plain language of Article 8, paragraph (f), of the agreement. The Organization does not have this right and it should not be granted by this Board. For ready reference, paragraph (f) of Article 8 reads:

“ARTICLE 8

(f) Time Limitation of Monetary Claims

Claims involving monetary consideration, not including any matter connected with or arising out of dismissal or other discipline, will be presented, as herein provided, within sixty (60) days from date of the occurrence on which the claim or complaint is based, otherwise such monetary claim arising out of such occurrences will be waived, except from date such claim is presented to an official of the railroad.”

It is further the position of the Carrier that in view of the fact it retained an officer on the payroll, viz: Division Trainmaster, at Jefferson City, there was no necessity for paying a dispatcher one day per week on the theory that he was relieving the Division Trainmaster. Likewise, under the peculiar circumstances concerning the Assistant Chief Dispatcher, Mr. Hopkins, who was formerly Division Trainmaster assigned nights and who was kept on the payroll by the Carrier during the period of the strike, requirement was not placed on the Carrier to put a train dispatcher on the payroll as Assistant Chief Dispatcher two days of each week on the theory that such dispatcher would be relieving Assistant Chief Dispatcher Hopkins on his rest days.

The Carrier believes that in all fairness to the railroad the Board should refuse to recognize this claim as a claim which is properly before the Board, and, further, that if the claim is to be recognized and handled by the Board the American Train Dispatchers Association should be required to state in detail the basis of the claim and its reasons for its failure to file claims in the proper manner and progress them through the regular channels, and that the Carrier be granted ample time in which to prepare a submission or statement in connection therewith.

(Exhibit not reproduced.)

OPINION OF BOARD: No useful purpose would be served by reciting the claim, which is to be found in the record, or by detailing the facts which raise the same issue decided in Awards Nos. 5445 and 5451. Therefore based on such Awards we hold the instant claim must be dismissed without prejudice for the reasons and upon the grounds therein set forth.

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

That the claim be dismissed in accord with the *Opinion and Findings in Awards Nos. 5445 and 5451.*

AWARD

Claim dismissed without prejudice as per the *Opinion and Findings.*

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of September, 1951.