

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 1) 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, when, beginning on or about September 10, 1949, this Carrier failed to provide relief service to relieve the chief train dispatchers on their regularly assigned weekly rest days, at:

Atchison, Kansas
Coffeyville, Kansas
Little Rock, Arkansas
Monroe, Louisiana
Nevada, Missouri
Poplar Bluff, Missouri
Pueblo, Colorado
Wichita, Kansas, and
Wynne, Arkansas.

2. The Missouri Pacific Railroad Company shall now compensate those train dispatchers who, under the provisions of the above mentioned agreement, were entitled to perform that service, for all time lost by them by reason thereof.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing rates of pay, hours of service and working conditions of train dispatchers effective August 1, 1945, and revised January 1, 1948, and September 1, 1949, 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 were in effect at the time this dispute arose. A copy of this Agreement and Letter-Agreement above referred to is on file with the 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 Train Dispatchers) to take one regularly assigned day off

In the period of the strike there was no necessity for any relief for the Division Trainmasters because they were not being required to perform service which is normally required of them when the railroad is running.

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 each of the points named in the Statement of Claim, there was no necessity for paying a dispatcher one day per week on the theory that he was relieving the Division Trainmaster.

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: The controlling facts in this case are practically the same as those involved in Award No. 5445. The claim is worded differently in that it asserts the Carrier failed to provide relief service to relieve chief train dispatchers on their regularly assigned weekly rest day but the gist of all contentions advanced by the Employees is that rules of the Agreement, alleged to have been violated, were due to abolishment of the involved positions during the duration of the 1949 strike. In the Award above mentioned we held that the instant claim, along with eleven others disclosed by our records, must be dismissed because it had not been filed in conformity with existing requirements of the Railway Labor Act. Therefore, based on what was there said and held this claim must be dismissed without prejudice. It is so ordered.

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 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 the claim be dismissed on the basis of our decision in Award No. 5445.

AWARD

Claim dismissed without prejudice and in accord with 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.