

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 "J") Claim of the American Train Dispatchers Association, that:

(1) The Missouri Pacific Railroad Company violated the intent of Article 3 and of Article 4-(e) of its Agreement with the American Train Dispatchers Association when, beginning on or about September 10, 1949, this Carrier failed to provide relief service to relieve the assistant chief train dispatchers on their regularly assigned weekly rest days, at:

Coffeyville, Kansas
Little Rock, Arkansas
Poplar Bluff, Missouri
Pueblo, Colorado
Wynne, Arkansas.

(2) The Missouri Pacific Railroad 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 between the parties to this dispute was in effect at the time this dispute arose. A copy of this agreement above referred to is on file with this Board and is, by this reference, made a part of this submission as though fully incorporated therein.

The scope of said agreement pertinent to this instant dispute reads as follows:

"Article 1 (a) Scope: (Effective January 1, 1948.)

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher', as hereinafter used, shall include Assistant Chief, trick, relief and extra train dispatchers. It is agreed that one Chief Dispatcher (now titled Division Trainmaster on this property), in each Dispatching Office shall be excepted from the scope and provisions of this agreement.

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 not 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 Assistant Chief Dispatchers on its payroll, who were formerly Division Trainmasters assigned nights, there was no requirement on the part of 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 the Assistant Chief Dispatcher 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: This is another of the twelve cases which this Board, in Award No. 5445 held must be dismissed because it was not filed in conformity with existing requirements of the Railway Labor Act. Therefore, based on what is said and held in such Award it is ordered that the instant claim be dismissed without prejudice.

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

That the claim be dismissed in the manner and under the same conditions as the Board directed the claim involved in Award No. 5445 to be dismissed.

AWARD

Claim dismissed 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.