

Award No. 5455

Docket No. TD-5359

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-K).

Claim of the American Train Dispatchers Association that:

1. The Missouri Pacific Railroad Company violated the intent of Article 3, Article 4-(e) and Article 5-(c) of its agreement with the American Train Dispatchers Association when, during the period of October 17 to 24, 1949, both dates inclusive, this Carrier failed to fill the position of third trick assistant chief train dispatcher at Coffeyville, Kansas, while the regular incumbent of that position temporarily vacated his position so as to work in place of the chief train dispatcher during the latter's absence on vacation, and

2. The Missouri Pacific Railroad Company shall now (a) compensate the senior qualified train dispatcher who was entitled under the rules of the Agreement to fill the temporary vacancy of third trick assistant chief train dispatcher at Coffeyville, Kansas, for all time lost by him due to the Carrier's failure to fill that position, and (b) compensate the regular relief train dispatcher whose regular assignment included performance of rest day relief service on the third trick assistant chief train dispatcher position at Coffeyville for all time lost by him by reason of Carrier's failure to permit him to fulfill that part of his regular assignment.

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 (titled Division Trainmaster on this property) in each dispatching

the week simply because Mr. Hays was not down at the office during his normal hours on the theory that there was a position which should have been filled. If the Carrier did not require the service of an Assistant Chief Dispatcher, then there was no requirement to take a dispatcher and put him on the job and carry him on the payroll when the railroad was not running.

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: In Award No. 5445, for reasons and upon grounds therein stated, this Board held that the instant claim, like nine others docketed immediately preceding it, should be dismissed because the Claimant had failed to file it in conformity with existing requirements of the Railway Labor Act. Therefore it must 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 without prejudice on the authority of Award No. 5445 this day adopted.

AWARD

Claim dismissed 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.