

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 "L") Claim of the American Train Dispatchers Association that:

(1) When, during the strike of train service employees which began on or about September 9, 1949, the Missouri Pacific Railroad Company prevented Train Dispatchers V. B. Smith and Robert Cowne of Pueblo, Colorado; F. H. Austin and B. B. Hughes of Osawatomie, Kansas, and W. T. Butler who, at the time, was employed at Jefferson City, Missouri, from performing compensated service in their regular positions to which the Carrier had assigned them in accordance with the agreement rules; to which service they were entitled and which they were ready and willing to perform, and when the Carrier denied them their respective requests for leaves of absence which, if granted, would have enabled them to have earned their livelihoods elsewhere, but instead, required them to hold themselves in readiness subject to call to return to their regular positions, the said V. B. Smith, Robert Cowne, F. H. Austin, B. B. Hughes and W. T. Butler were subject to the Carrier's continuing authority to supervise and direct the manner of rendition of their service, and that therefore their status was the same as regularly assigned employees.

(2) The Missouri Pacific Railroad Company shall now pay the said V. B. Smith, Robert Cowne, F. H. Austin, B. B. Hughes and W. T. Butler such sums as represent their respective total monetary loss sustained by each of them by reason of the Carrier's improper action as set forth in above paragraph (1) of this claim.

EMPLOYEES' 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 thereof is on file with this Board and is, by this reference made a part of this submission as though fully incorporated herein. The scope of said agreement and the rules pertinent to the instant dispute read 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

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 the twelfth and final claim filed by the Employees for the purpose of having this Board hear and determine, in twelve separate and distinct cases, divers phases of a dispute which was progressed and disposed of on the property as a single claim.

In Award No. 5445 we held, that under the foregoing conditions and circumstances and other facts disclosed by the record, proper compliance with existing provisions of the Railway Labor Act required that all phases of the claim, progressed on the property as a unit, should be submitted to this Board in one proceeding and that the Employees' failure to comply with the requirements of such Act in that respect compelled a dismissal of the instant claim as well as all others relating to the same dispute without prejudice, the Employees being granted the right to bring all phases of the controversy to this Board in one proceeding if in the exercise of future judgment they deemed it expedient to do so. Therefore, based on what is said and held in the Award heretofore referred to, 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 for the reasons and upon the grounds set forth in Award No. 5445.

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.