

Award No. 5648

Docket No. TD 5573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SACRAMENTO NORTHERN RAILWAY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Sacramento Northern Railway failed to comply with its commitment dated June 6, 1950, when it refused and continues to refuse to pay Chief Train Dispatcher F. R. Justis the difference between what he was paid and what he should have been paid if, in accordance with the above mentioned commitment of the carrier, the daily rate of pay had been determined in the manner prescribed by Rule 23 of the current agreement, and

(b) The Sacramento Northern Railway shall now comply with its commitment dated June 6, 1950, and compensate F. R. Justis in an amount representing the difference between what he has been paid and what he should have been paid for service performed as chief train dispatcher between September 1, 1949, and December 8, 1950, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: There exists between the Sacramento Northern Railway and its train dispatchers represented by the American Train Dispatchers Association an agreement effective April 1, 1945, last revised August 26, 1949, effective September 1, 1949, governing compensation, hours of service and working conditions. A copy of the Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein. The following contract rules of that Agreement, pertinent to this dispute, reads as follows:

"RULE 23—MONTHLY EMPLOYEES DAILY RATE:

"Train Dispatchers shall be monthly employes, but the monthly compensation shall be computed on a daily basis.

"To determine the daily rate, multiply the monthly rate by 12 and divide the result by 261. To determine the straight-time hourly rate, divide the monthly rate by 174.

"Future wage adjustments, so long as such rates remain in effect on such basis, shall be made on the basis of 200 hours per month.

August 30, 1949 and September 2, 1949, in which they agreed that the question of rate of pay on position of chief train dispatcher is a managerial prerogative, it is illogical that Carrier would even consider the rate of pay of the chief train dispatcher subject to terms of the agreement.

This claim is:

- (1) Contradictory to the Scope Rule of the Current Agreement; and
- (2) its submission to your Honorable Board is violating the terms of letter agreement between the Organization and Carrier.

All of the above has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The Division finds insufficient undisputed facts in the record upon which to base a determinative Award. Therefore, the case should 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 case will be dismissed.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of February, 1952.