# Award No. 5659
# Docket No. TD-5629

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Hubert Wyckoff, Referee**

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION

## THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Western Pacific Railroad Company failed to properly apply the provisions of Rules 3 (a), 3 (c), and 3 (f) of the existing agreement during the period beginning September 1, 1949, and ending December 16, 1950, when it failed and refused to assign a second consecutive rest day to each chief train dispatcher position in its Sacramento, California, and Elko, Nevada, train dispatching offices, thereby depriving train dispatchers listed in paragraph (b) hereof of such train dispatching work, and

(b) The Western Pacific Railroad Company shall now compensate Train Dispatchers P. L. Huckaby, Reed Shaw, J. L. Geist, C. C. Miller, W. F. Goldsberry, Rex Brooks, E. J. Hillier, L. Contri, L. C. Jaskala, and G. L. Harlan who were available and entitled to perform service on a second consecutive rest day on the chief train dispatcher positions during the period stated in above paragraph (a) the difference between what they were paid for service performed on lower rated positions and the rate of the chief train dispatcher positions in accordance with the rules cited in paragraph (a) hereof. Such payments to be on a basis of the provisions of Rule 13 of the current agreement, and

(c) The Western Pacific Railroad Company failed to properly apply the provisions of Rule 13 of the current agreement when it failed and refused to compensate Train Dispatchers P. L. Huckaby, W. F. Goldsberry, Reed Shaw, C. C. Miller, J. L. Geist, J. A. Wherland, J. C. Calkins, E. J. Hillier, L. Contri, L. C. Jaskala and G. L. Harlan in accordance with that rule for rest day relief and other temporary periods of service performed on the position of chief train dispatcher in its Sacramento, California, and Elko, Nevada, train dispatching offices, during a period beginning September 1, 1949, and ending December 16, 1950, and

(d) The Western Pacific Railroad Company shall now compensate the train dispatchers named in paragraph (c) hereof the difference between what they were paid while relieving the regularly appointed chief train dispatcher on weekly rest days and other temporary periods of service and what they were entitled to under the provisions of Rule 13 of the current agreement.

has suffered. See Akin vs. Bonfils, 67 Okl. 123, 169 P. 899; Brisley v. Mahaffey, 87 Okl. 257, 209 P. 920. Thus it was held that, where the plaintiff had two horses killed at the same time by the train of a railroad company, and sued the company before a justice of the peace for the killing of one of the horses, and recovered judgment for $100, being the extent of the justice's jurisdiction, he could not afterwards maintain an action for the killing of the other horse. Brannenburg vs. Indianapolis P.&C.R. Co., 13 Ind. 103, 74 Am. Dec. 250. Many illustrations may be found in cases listed under Judgments, Key 591 et seq. Decennial Digest; and see, also, 34, C.J. 833, 834.'

"Since the record reveals that the claim violates the foregoing rule of law, and since we are convinced that the rule is applicable herein, and is a good rule, the decision of the Board is that the claim should be denied, and accordingly it is so ordered.

"The record reveals that this is an attempt on the part of the employes, or their representatives, to reopen the case settled by Award 63, and is a clear violation of a well established rule as to the splitting of causes of action."

It is Carrier's position that the resubmission of this dispute violates the fundamental rule of law prohibiting splitting a cause of action, and should be denied. The record leaves no doubt but that the American Train Dispatchers Association should have and could have submitted this portion of their claim with the first portion submitted in Docket TD-5109 had they desired and intended to claim differential in pay for the claimants named herein.

All of the above has been presented to the Employes.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim was denied by the Carrier and is resisted here, not upon the merits which were determined adversely to the Carrier in Award 5111, but upon the ground that it is barred because the Order accompanying Award 5111 addressed to the Carrier contained a blank order date and did not require any monetary payments. The Carrier's position is generally that a claim cannot be split and prosecuted piecemeal, and that this one was.

The dispute had its genesis while the parties were attempting to conform their Agreement to the National Five Day Work Week Agreement. The Carrier agreed to adopt the specific rules of the National Agreement relating to rest days, but refused to amend another rule in the Agreement on the property which assigned only one rest day to chief train dispatchers. This left in the Agreement, as it was amended effective September 1, 1949, an ambiguity which Award 5111 resolved against the Carrier.

During September 1949 three of the Claimants, whose claims are presented here, filed monetary claims covering specific dates in September. These claims were denied by the Carrier. The appeal to the chief operating officer of the Carrier refers to these monetary claims; but the real gist of the dispute at this point, as from the beginning, was whether the newly adopted rest day amendments applied to the chief train dispatcher position. The chief operating officer, in denying the claim, specifically denied the three monetary claims stating, "the Chicago Agreement of March 25, 1949 is not applicable to position of Chief Dispatcher and your claim is denied."

No monetary claims were made in the Organization's Statement of Claim in Docket TD-5109 upon which Award 5111 was based. This amounted to an abandonment of the three monetary claims denied on the property. However,

the parties have since mutually agreed "to add the names of all train dispatchers who would have received payment under Award 5111 had the Order of the Board required monetary payment." In the circumstances this understanding resubmitted the three abandoned monetary claims for adjudication here and they are included in the claim before us, not merely for the few days in September, but for the full period involved.

Finally, Award 5111 itself did not adjudicate any monetary claims. All that it did was to establish a violation of the Agreement and the date whence it occurred.

The obligation to provide relief service for the chief train dispatcher positions on two days instead of one from September 1, 1949 was therefore established by Award 5111. The only questions left open were: what employes lost this relief work as a result of the Carrier's violation of the Agreement? when did they lose it? and how much did they lose? These are fact questions which, by reason of a joint check on the property, are not in dispute here except for the method of calculating the daily rate.

It is true that the Organization might have combined specific or general monetary claims with the claim presented in the prior docket (See Award 5630). But we are unable to conclude that the Organization was required to do so or that failure to do so bars this claim.

FIRST. The Carrier's main reliance is upon legal doctrine with respect to "splitting causes of action" and upon Award 1215. This Board is not a court of law where procedural traps are sometimes set for the unwary. But even in a court of law, the alignment of parties here is such that the doctrine is inapplicable.

The claim adjudicated in Award 5111 involved the application of the National Five Day Work Week amendments to the position of chief train dispatcher, whereas the claim presented here involved the consequential monetary rights of train dispatchers entitled to relieve the chief train dispatcher. Both claims arose from the same wrong, but the real parties in interest are different, even in the technical legal sense.

Award 1215 is not contrary to this conclusion. These the identical individual claimants were seeking monetary relief for losses sustained prior to the retroactive date adjudicated by a prior award.

SECOND. The Railway Labor Act lays down no such procedural requirement as the one urged here by the Carrier. The Act does announce a general purpose "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements" (see Awards 1215, 4346 and 5077).

These parties were confronted with novel and important questions arising out of the adoption of the National five day work week. It seems to us that the prompt and orderly settlement of such disputes is served by first securing from the Board interpretations which should thereafter bring about the disposition of a vast volume of individual claims by local handling on the property; and that the procedure followed by the Organization in the presentation of these claims therefore tended to promote the general purposes of the Act.

THIRD. There remains to consider whether the daily rate of pay to which Claimants are entitled should be computed on the basis of a 261 or a 313 day annual work assignment, both for the relief work performed and for the relief work lost.

The answer to this question does not depend upon whether the chief train dispatcher position is an excepted position or whether the rate of pay of the chief train dispatcher is a matter of "managerial prerogative" (see Award

5244). Assuming that it is an excepted position for some purposes, the establishment of an obligation to provide two rest days for the position effective September 1, 1949 necessarily establishes a 261 divisor for the purpose of fixing the rate of pay of train dispatchers entitled to relieve the chief train dispatcher, no matter by whom or how the chief train dispatcher rate of pay is fixed.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated as above found.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.