

Award No. 5675

Docket No. TD-5646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, 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 and refused to properly compensate relief dispatcher E. L. Coker for rest day and other relief service performed on its chief train dispatcher position during a period between August 11, 1950, and December 9, 1950, and

(b) The Sacramento Northern Railway shall now be required to compensate relief dispatcher E. L. Coker for the difference between what he was paid and what he should have been paid pursuant to the provisions of Rules 5 (a), 5 (b), 6 (a), and 23 of the current agreement for rest day and other relief service including overtime service performed on Carrier's chief train dispatcher position during the period set forth in paragraph (a) hereof.

EMPLOYES' STATEMENT OF FACTS: There exists a schedule agreement between the parties to this dispute, effective April 1, 1945, last revised August 26, 1949, effective September 1, 1949. A copy of this schedule agreement and all revisions of same are on file with your Honorable Board and each and all of them are by this reference made a part of this submission as though each and all of them were fully set out herein.

The rules of the current agreement pertinent to the claim here submitted are as follows:

"RULE 5. HOURS OF SERVICE—OVERTIME—CALLS

"(a) Eight (8) consecutive hours shall constitute a day's work for train dispatchers.

"(b) Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.

"RULE 6. REST DAYS—RELIEF SERVICE

"(a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week

Application of Award in Docket TD-5109 to the position of excepted chief train dispatcher on Sacramento Northern fulfilled the terms of the letter agreement and constituted full settlement of the dispute. It is, therefore, Carrier's contention that submission of this claim is a violation of the letter agreement.

Award No. 5123, Docket No. DC5049, Third Division, National Railroad Adjustment Board, recognized the enforceability of letter agreements.

Secondly, by Vice President Geil's agreeing on manner in which the dispute could be settled, the subsequent filing of the claim in this docket constitutes splitting a cause of action. In both the claim contained in Docket TD-5109 and the claim originally filed in former General Chairman Chapman's letter dated November 25, 1949, the end result would be that the daily rate of pay for the relief chief train dispatcher would be computed in accordance with Rule 23 of current agreement, or on a 261 day divisor. They both originate out of the Five Day Week Agreement, effective September 1, 1949, and had the Board's Order accompanying Award 5111, Docket TD-5109, required payment, the claimant would have been compensated.

Award 1215, Third Division, with Referee Harris L. Danner, recognized the well-established rule of splitting causes of action. There is neither reason nor justice in a rule which would permit the American Train Dispatchers Association to divide a question into as many parts as suits their convenience without regard to inconvenience, hardship or expense to the Carrier. As stated in the case of *Baltimore Trust Co. vs. Norton Coal Mining Company*, 25 F Supp. 968:

"The rule of prohibiting the splitting of a cause of action is a rule of procedure intended for preventing harassment of persons in business and for peace of society generally, and to prevent multiplicity of actions."

It is Carrier's position that this claim should be denied. It is in violation of:

- (1) Letter Agreement between the parties; and,
 - (2) Fundamental rule of law prohibiting splitting a cause of action.
- (Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Docket TD-5045, Award 5674. With reference to Carrier's plea of splitting causes of action, the Board is not unmindful of Referee Parker's Opinion in Award 5445. It would seem to be beyond peradventure of a doubt this claim and the claim in Award 5111 came into being from Carrier's act. It is also true it would have been highly desirable to have consolidated all claims arising from the act on the part of the Carrier either on the property or by action of this Board. We must bear in mind the plea does not smack of the features or characteristics of a plea in abatement but on the contrary is procedural only. Where the facts are not in dispute, the insurmountable difficulties mentioned by Referee Parker do not exist.

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

The facts of record warrant an affirmative award.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.