

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association in behalf of train dispatchers in the employ of the Great Northern Railway Company (hereinafter referred to as the Carrier), that:

- (1) The Carrier did not properly comply with the provisions of the Agreement dated Chicago, Illinois, March 25, 1949, (hereinafter referred to as the Chicago Agreement of March 25, 1949), said Agreement being by and between the participating Carriers, one of which was the Carrier herein named, and represented by the Carrier's Conference Committees, and employees of Carriers as represented by the American Train Dispatchers Association, when:

The Carrier failed and refused and continues to fail and refuse to revise the NOTE which is a part of Article 1-(a) of the existing Agreement, in accordance with the below quoted part of Section 1, Article III, of the said Chicago Agreement of March 25, 1949, viz:

"All existing agreements providing for one (1) rest day per week shall be revised so that effective September 1, 1949, they shall provide for two (2) regularly assigned rest days per week * * *."

and because such refusal has failed to assign two, instead of one weekly rest day "to each excepted chief train dispatcher position as a part of the weekly schedule of work for any train dispatcher assignment."

- (2) The Carrier failed and refused and continues to fail and refuse to compensate train dispatchers who are fully covered by all rules of the current Agreement, in accordance with the terms of that Agreement, including Section (a) of Article VII, (as revised effective September 1, 1949), when the Carrier requires them to perform work in the position of chief train dispatchers.
- (3) The Carrier shall now be required to:
 - (a) Revise the NOTE of Article 1-(a) of the existing Agreement, as is required by that part of Section 1, Article III, of said Chicago Agreement of March 25, 1949, (above quoted) as of the effective date set forth therein;

- (b) Compensate Train Dispatchers F. J. McGuire, E. C. Hanscom and Extra Train Dispatcher E. J. McGraw, of the Willmar, Minnesota office, in such amounts as is represented by the difference between what was paid them and what they should have been paid had the Carrier permitted them to perform work to which they were contractually entitled beginning September 1, 1949, but which work was denied them because the Carrier refused to fully comply with that part of Section 1, Article III, of the Chicago Agreement of March 25, 1949, quoted in above Item 1 hereof.
- (c) Compute in the manner prescribed by Section (a) of Article VII of the Agreement, (as revised effective September 1, 1949), all compensation paid and/or due Claimants L. B. Sapp and F. J. McGuire for work performed in the position of chief train dispatcher since September 1, 1949.

EMPLOYES' STATEMENT OF FACTS: On or about July 26, 1948, the American Train Dispatchers Association served notices upon certain carriers, including the Great Northern Railway Company, requesting changes in certain rules and working conditions then in effect pursuant to the then existing schedule agreements and the provisions of the Railway Labor Act, as amended. Required conferences and negotiations were thereafter had on the respective properties without agreement being reached with respect to said notices. Thereafter, certain carriers, including the Great Northern Railway Company, designated and authorized certain committees to act for and on their behalf in negotiating an agreement to be applicable to all carriers party to such negotiations.

The authorizations of the committee representing carriers in that group commonly known and referred to as "Western Carriers", which includes the individual authorization of the Great Northern Railway Company, provided that:

"Authorization is co-extensive with the provisions of current schedule agreements applicable to the employees represented by the American Train Dispatchers Association."

Thereafter, on March 25, 1949, at Chicago, Illinois, an agreement (hereinafter referred to as the "Chicago Agreement") was entered into by and between the duly designated and authorized committee representing the Claimant and the respective committees representing authorizing carriers, including the Great Northern Railway Company. Said Chicago Agreement was and is in settlement of the dispute growing out of the aforesaid notices served by the Claimant on or about July 26, 1948. Article V of the Chicago Agreement provides:

"This agreement is in settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about July 26, 1948, and the notices served by the carriers on the employees represented by the AMERICAN TRAIN DISPATCHERS ASSOCIATION on or about July 26, 1948, and shall be construed as a separate agreement by and on behalf of each of said carriers and its said employees; and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended."

Among the provisions of the Chicago Agreement, the first paragraph of Article III, Section 1, is particularly material to the claim here involved. Its provisions are set out in the foregoing Statement of Claim.

In addition to the Chicago Agreement, a Schedule Agreement is also in existence between Carrier and Claimant. Said Schedule Agreement (hereinafter referred to as the "Agreement") bears the effective date of Sep-

In the instant case, however, Rule 3(f) is absent. There is no link tying in excepted chief train dispatchers with the application of Rule 3(a), but, to the contrary, there is a clean-cut and unambiguous provision in Rule 3(a) excepting from the scope of the agreement "one chief train dispatcher in each dispatching office."

In conclusion, therefore, we hold that:

1. The application of the Chicago Agreement of March 25, 1949 is specifically restricted by that agreement to the following: "The employes of such Carriers, as represented by the American Train Dispatchers Association, and covered by their separate agreements." (Underscoring ours.)

2. This restriction is further emphasized by Article I of the agreement, wherein it is stated "The term 'train dispatchers' wherever it appears in the agreement refers to and includes all employes covered by this agreement." (Underscoring ours.)

3. Further evidence of this intent, if such be needed, is furnished in statements of members of the Carriers' Conference Committee which negotiated such Chicago Agreement (Carrier's Exhibits C-1 through C-4).

4. The agreement between this Carrier and the American Train Dispatchers Association expressly excludes from the scope thereof "one chief train dispatcher in each dispatching office who is not regularly assigned to a shift performing train dispatchers' work."

5. There is not in the agreement between this Carrier and the American Train Dispatchers Association a rule comparable to Rule 3(f) of the agreement between said Association and the Western Pacific Railroad Company "including positions of chief train dispatcher" as relief requirement, which rule, based upon the language of your opinion therein, constitutes the reason for your Board sustaining the Position of the Employes in Award 5111.

6. And, therefore, in view of the foregoing facts, the claim of the employes in this case, not being supported by the provisions of agreements relied upon, must be denied, and we pray your Board so to find.

It is hereby affirmed that all data herein submitted in support of Carrier's Position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This case arises as a result of the Chicago Agreement of March 25, 1949. The employes allege that the Carrier failed to carry out the terms of the Chicago Agreement by refusing to revise the "Note" which appears following Article I(a) of the existing agreement on the Great Northern property and which is as follows:

Note: "A weekly rest day shall be assigned to each excepted chief train dispatcher position as a part of the weekly schedule of work for any train dispatcher assignment."

The Carrier maintains that under the terms of the scope rule of the existing agreement there is no obligation on their part to do other than what was written into the existing agreement by virtue of an agreement between the parties with effective date of September 1, 1949.

The scope rule of the existing agreement provides that "This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to a shift performing train dispatchers work."

Article III, Section 1, of the Chicago Agreement reads, "All existing agreements providing for one (1) rest day per week shall be revised so that effective September 1, 1949, they shall provide for two (2) regularly assigned rest days per week * * *."

It becomes necessary for this Board to go back to the agreement of September 15, 1947. Taking into account the facts and evidence as appear in the docket we conclude that regular chief train dispatchers are not represented by the American Train Dispatchers Association, because of being expressly excluded by the Scope Rule of the existing agreement between the Carrier and the Association dated September 15, 1947.

The effect of the "Note" under Article 1(a) is to give the chief dispatchers' work to train dispatchers on the rest days or vacation days or any other temporary absence from his position by the chief train dispatcher. In other words, it gives a right to work to train dispatchers when certain conditions exist.

This is a question of how to apply the Chicago Agreement. It is not our purpose to attempt to write new rules between the parties. We are without authority to so do.

It is our opinion that the incumbent, or regular occupant of the position, is excluded from benefits. He, the incumbent, was not a party to the Chicago Agreement nor was he represented by the American Train Dispatchers Association on the property.

On the other hand, a train dispatcher, as set out in Article I of the Chicago Agreement, is covered by the Agreement. Filling the position of chief train dispatcher on a temporary basis is a part of a train dispatcher's contractual rights, as evidenced by the Agreement of September 15, 1947.

Thus, the position of chief train dispatcher, when occupied by other than the incumbent, or a permanent successor, is considered to be a five day per week position and the rate of pay for one occupying such a position on a temporary basis should be 1/261 of the yearly amount of pay to which the position is entitled.

Part 3(b) of this claim is vague and indefinite as to facts. If these Claimants were deprived of work because temporary occupants of the position were not given two days' rest, the claim should be sustained. If their claim is because of incumbent chief train dispatchers not having been given two days' rest, the claim is invalid.

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 agreement was violated by the Carrier as shown in the Opinion

AWARD

Part 3(a) of the claim is sustained to the extent indicated in the Opinion.

Part 3(b) of the claim is sustained in accordance with Opinion.

Part 3(c) of the claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1952.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 5829

DOCKET NO. TD-5878

NAME OF ORGANIZATION: American Train Dispatchers Association.

NAME OF CARRIER: Great Northern Railway Company.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

We have been asked to interpret Part 3 (a) of the claim in which we held that "Part 3 (a) of the claim is sustained to the extent indicated in the Opinion."

It was our intention that the rest day of the incumbent of the position of excepted chief train dispatcher should not be affected by our Award.

The work on rest days of the excepted chief train dispatcher belongs to train dispatchers, but there was nothing in the record which would give this Board the right to increase those rest days, insofar as the incumbent might be concerned.

The purpose of the Chicago Agreement was to give more days of rest to the employes, whose representative organizations were signatory to the Agreement. It was not the purpose to increase the amount of work available as would result by an increase in the rest days of the incumbents of the chief train dispatchers positions.

In other words, the increase in rest days for chief train dispatchers is to apply only to those filling the positions on a temporary basis.

Referee David R. Douglass who sat with the Division, as a member, when Award No. 5829 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.