

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(a) The Gulf, Mobile and Ohio Railroad Company failed to comply with the provisions of the current train dispatchers' Agreement, particularly Article 1 (a) and Article 3 (c) as revised effective September 1, 1949, when it failed and refused to compensate Relief Dispatcher W. E. Albright at the rate applicable to the position worked on the following dates, Tuesdays—March 6, 13, 20 and 27, 1951, April 3 and 10, 1951.

(b) The Gulf, Mobile and Ohio Railroad Company shall now pay Relief Train Dispatcher W. E. Albright the difference between the amount he was paid for service on the dates specified and what he would have received had he been paid at the rate applicable to the position worked as provided by the Agreement Rules cited in paragraph (a) hereof.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Gulf, Mobile and Ohio Railroad Company and its train dispatchers represented by the American Train Dispatchers Association, governing Hours of Service and Working Conditions of train dispatchers effective July 1, 1948. Effective September 1, 1949, certain rules of said agreement and copy of the rules thereof as revised effective September 1, 1949, are on file with your Honorable Board and are by this reference made a part of this submission as though fully incorporated herein. The rules of said agreement pertinent to the instant claim read as follows:

Article I, Section (a) as revised effective September 1, 1949:

"ARTICLE I

"(a)—SCOPE:

"The term 'train dispatcher', as used herein, shall include trick, relief, and extra train dispatchers. Day chief, night chief, and assistant chief train dispatchers who are not required to perform trick train dispatchers' duties, are not included within the scope of this agreement. Day chief, night chief, and assistant chief train dispatchers who are required to perform trick train dispatchers' duties, shall

Division Third is without power and authority to require Carrier to grant to, or award to, Claimant any rights or emoluments other than those due, by agreement between the parties, as a shift (trick) train dispatcher. It has been specifically shown, and is repeated:— Claimant was not at any time, on any date, promoted to, or required to perform duties as the Night Chief Dispatcher. Claimant was, and is, only a shift (trick) train dispatcher: ALL services required of him in the past, on dates in the claim, and at the present, regardless of what degree of responsibility those duties entail, were and remain as services (required of Claimant) only as a trick train dispatcher, and the rate of pay is limited to be not less than the trick train dispatcher's rate of pay contracted for by agreement.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of the National Railroad Adjustment Board, Third Division.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is for a difference in compensation based upon work performed on certain specified dates. A disagreement exists as to the rate applicable to the position worked.

The Board must find from the evidence that the Claimant was paid a higher rate when he relieved on the third shift at Meridian, occupied the other six nights of the week by the Night Chief Dispatcher, than he received when he relieved the Train Dispatcher.

Under Article 1 (a)—Scope, the night chief dispatcher, who in this case was required to perform trick train dispatcher's duties, was not excluded from the Scope of this Agreement as it relates to "relief service."

Under Article 3 (c) this position on the third shift being subject to the "relief service" provision must be considered a "relief requirement" and the Claimant is entitled to be "paid at the rate applicable to the position worked." The Night Chief Dispatcher position is not "excepted." It is expressly included under the provisions upon which this claim is based.

To uphold the Carrier's contention would require this Board to read in additional language by way of exception to the phrase "rate applicable to the position worked." If Article 1 (a) and Article 3 (c) are read together, then it is evident that the "position" referred to for the limited purpose of determining the applicable rate is that of Night Chief Dispatcher.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 has been violated.

6377--11

1002

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.