

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WABASH RAILROAD COMPANY

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

(a) The Wabash Railroad Company, hereinafter referred to as "the Carrier," acted contrary to the intent of Article 8-(a) of the Agreement effective May 1, 1946, as revised effective September 1, 1949, when it failed and declined to compensate Train Dispatcher W. H. Peters by a determination of the daily rate of the position filled by multiplying the regular monthly rate by 12 and dividing the result by 261, in accordance with the provisions of Article 8-(a), for service performed in relieving the regular appointed chief train dispatcher in its Montpelier, Ohio, train dispatching office on 27 days May 1 to May 31, 1952; 7 days June 1 to June 8, 1952; and 13 days during the period September 27 to October 11, 1952.

(b) The Wabash Railroad Company shall now compensate Train Dispatcher W. H. Peters for the difference between what he did receive for service on the chief train dispatcher position for the above number of days, which compensation the Carrier incorrectly based on Article 8-(a) of the Agreement effective May 1, 1946, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 313, and the compensation to which the claimant is entitled by the provisions of Article 8-(a) as revised effective September 1, 1949, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 261.

EMPLOYES' STATEMENT OF FACTS: In the existing Agreement between the Wabash Railroad Company and the train dispatchers employed thereon represented by the American Train Dispatchers Association, effective May 1, 1946, and revisions thereof, all of which are on file with your Honorable Board and by this reference made a part hereof, the following rules are pertinent to adjudication of this dispute:

"ARTICLE 1—SCOPE: (Effective May 1, 1946)

"(a) 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 on each operating division which position shall not be subject to any of the provisions of this agreement."

"(Authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented by the American Train Dispatchers Ass'n)."

It is of course obvious from the foregoing and from the second paragraph of Article 1 (a) of the basic Agreement effective May 1, 1946, between the parties hereto, that the aforementioned Agreement signed at Chicago on March 25, 1949, does not apply to the one position of Chief Train Dispatcher involved in the dispute herein.

That this fact was recognized by the representatives of the parties hereto is amply demonstrated by the contents of the aforementioned Memorandum of Agreement between the parties hereto which was made pursuant to the Chicago Agreement of March 25, 1949, and became effective September 1, 1949. That Memorandum of Agreement contains no reference whatever to the position of Chief Train Dispatcher.

The rates of pay and working conditions of individuals filling the one excepted position of Chief Train Dispatcher on each operating division of this carrier are not prescribed or circumscribed in any way by the terms of any agreement between this Carrier and its employes represented by the American Train Dispatchers Association, and therefore, the alleged dispute set up in the Association's Statement of Claim is not a dispute:

"* * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, * * *"

such as is described in Section 3 (i) of the Railway Labor Act and is, therefore, not a dispute over which this Board is vested with jurisdiction.

The alleged claim set up in the Association's Statement of Claim is entirely without foundation under any rules of the Agreement in effect between the parties hereto and should be dismissed.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: We have the same problem involved here as we had in Award 6581 and the same award is in order.

The Carrier attempts to put a different slant on the problem, however, by urging that on the days when the claimant worked the Chief Dispatcher's job he was "promoted" to the position of Chief Dispatcher, thereby removing himself from the protection of the Agreement. We think the use of the word "promoted" in this sense, even assuming it to be correctly used, does not change the situation. See Award No. 6504.

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 Carrier did not properly comply with the provision of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.

DISSENT TO AWARD 6583—DOCKET TD-6586

The Award is not based upon the facts in this particular case, but relies on Awards 6504 and 6581 to support the conclusions arrived at by the majority.

Further, the Award ignores the normal promotion procedure provided by Article 4 (i) of the Agreement and holds:

“* * * We think the use of the word ‘promoted’ in this sense, even assuming it to be correctly used, does not change the situation. * * *”

For these reasons this Award errs and we dissent therefrom.

/s/ R. M. Butler
/s/ W. H. Castle
/s/ E. T. Horsley
/s/ J. E. Kemp
/s/ C. P. Dugan