

Award No. 6746

Docket No. TD-6819

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as "the Carrier," acted contrary to the intent of Article 4-(a) and (b) of the currently effective agreement between the parties to this dispute when, beginning June 1, 1953, it failed and refused and continues to fail and refuse to compensate its train dispatchers covered by that agreement in accordance with the above cited Article 4-(a) and (b) when such train dispatchers have been and are used to perform rest day relief or extra service on the position of chief train dispatcher during the rest day relief or other temporary absence therefrom of the regularly appointed incumbent thereof in any or all of Carrier's train dispatching offices.

(b) The Carrier shall now pay to each train dispatcher performing the rest day relief or extra service referred to in paragraph (a) hereof the difference between what it has paid or continues to pay such train dispatchers under its presently existing method of computing the daily rate and the compensation to which they are entitled under the method required by Article 4-(a) and (b) of the agreement, beginning June 1, 1953, and continuing until the violation herein claimed has ceased for each day on which the aforementioned train dispatchers covered by the agreement have performed or continue to perform rest day relief or extra service on the position of chief train dispatcher during the absence of the regularly appointed incumbent thereof.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Carrier and the claimant organization, effective January 1, 1950, sometimes hereinafter referred to as "the Agreement." This Agreement is on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

2. The method of computing the rate to be paid train dispatchers who are used to perform rest day relief or extra service on the position of chief dispatcher has remained uniform for a period of 29 years.

3. The Organization's request of July 26, 1948 did not request a change in the method of computing the rate to be paid train dispatchers who are used to perform rest day relief or extra service on the position of chief dispatcher. (See Carrier's Exhibit "A").

4. The Agreement of March 25, 1949 did not change the method of computing the rate to be paid train dispatchers who are used to perform rest day relief or extra service on the position of chief train dispatcher. (See Carrier's Exhibit "B").

5. The Organization's claim is tantamount to a request that your Board provide a rule for the parties establishing a new method to be used in computing the rate to be paid train dispatchers who are used to perform rest day relief or extra service on the position of chief train dispatcher.

6. Your Board has recognized in a number of earlier Awards the Board's lack of authority to write a rule into an Agreement.

Inasmuch as there has been no violation of the Agreement, the Carrier respectfully petitions your Board to deny the claim.

It is hereby affirmed that all of the foregoing is, in substance, known to the Petitioner and is hereby made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The pertinent facts are well outlined in the submissions of the parties and there is no occasion for repeating them in the Opinion.

As to the merits it suffices to say the Referee now sitting with this Division of the Board believes in the doctrine of stare decisis and is committed to the proposition that adherence to such principle, where the considered opinions of outstanding and well recognized Referees can be regarded as practically unanimous, is conducive to the perpetuation of the Board and the best interests of Labor and Management. Under the confronting facts and circumstances as set forth in the ex parte submissions of the respective parties the overwhelming weight of authority, as evidenced by Awards of this Division involving similar factual situations and agreement rules, holds that the action of the Carrier as set forth and described in the submissions resulted in a violation of the Agreement as charged in the instant claim. See Awards Nos. 5244, 5659, 5716, 5829, 5904, 5975, 6292. There are others of like import.

Therefore based on the foregoing Awards we hold the record establishes sound grounds for the sustaining of the instant claim and it is so ordered.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Carrier violated 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 5th day of August, 1954.