

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader—Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(a) The St. Louis Southwestern Railway Company, herein-after referred to as "Carrier," failed to comply with the intent of the rules of the current agreement between the parties to this dispute, particularly Sections (a) and (b) of Article 3 thereof, when it failed and refused to compensate the following train dispatchers at rate of time and one-half for service performed on the dates specified herein:

J. U. Chrisman — February 11, 1954.
B. M. Martin — February 11, 1954
A. J. Vaughn — February 13, 1954.

(b) The St. Louis Southwestern Railway Company shall now pay to train dispatchers J. U. Chrisman, B. M. Martin and A. J. Vaughn the difference in what they were paid at pro rata rate and what they would have received if they had been properly compensated at rate of time and one-half for service performed on the days specified in above Section (a) of this claim.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, bearing effective date of June 16, 1946, and amendments thereto, including a revision effective September 1, 1949. A copy of this agreement and revisions thereto 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.

For ready reference and convenience of the Board the rules most pertinent to this dispute are quoted as follows:

"ARTICLE I

"a. SCOPE. 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 dispatch-

Please note that no duration of rest days is set forth for the extra dispatcher, and that the time specified as rest days for regularly assigned employes is substantially modified when the regular employe is assigned to relief work and that it does not apply at all when train dispatchers transfer in the exercise of seniority. This rule recognizes that changes will occur due to increase and decrease in force and for other reasons, and was designed to prevent unnecessary loss of time to employes who may change their regularly assigned jobs when a more desirable job becomes available, or when due to reduction in force they may be forced to take a less desirable job or simply a different job. Change is a recognized condition. The regularly assigned dispatcher who loses his position is not required to wait 72 hours from the time he last began work on that assignment to begin work on a new regular assignment. Is he required to wait 72 hours or some other period before beginning work as an extra employe? The rule contains no such requirement.

In the present case the service performed was not on the "rest days assigned to their position." Claimants had no position at the time involved. Their positions had been abolished. The work performed was on positions under bulletin in another office. If they assumed the conditions of the positions they were filling, the work involved was not on the rest days of such positions. Neither were the claimants in the category of extra train dispatchers who had worked in excess of five consecutive days. In the case of Dispatchers Chrisman and Martin claim covers the first date worked as extra or unassigned dispatchers, while for Dispatcher Vaughn it was the third day.

Thus it is plain that the rules do not support the claim either on the basis that the claimants on the dates involved were regularly assigned dispatchers working on an assigned rest day of their position, or that they were extra dispatchers who had worked five consecutive days as such and were working on the sixth or seventh day.

Furthermore, in the case of Dispatcher Martin, he had not worked five consecutive days even if the time worked as a regularly assigned dispatcher were counted. As shown by the Statement of Facts, he worked Saturday, February 6; Sunday, February 7; Monday, February 8; and Tuesday, February 9. He was held off Wednesday, February 10, and did not work. Therefore he worked four consecutive days as a regularly assigned train dispatcher at Ilmo, was paid for one day lost and then worked at Pine Bluff February 11, the date of claim. Payment for not working is not equivalent to "working" under the terms of the rule. The penalty in second paragraph of Article 3(b) applies to extra train dispatchers:

"* * * who are required to work in excess of five (5) consecutive days * * *," (Emphasis ours.)

The Carrier respectfully submits that the rules clearly do not support any of the claims, and it requests that the claims be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: We are not in agreement with the contentions of Petitioners in support of this claim. The Organization bottoms the claims on the proposition that the regular assigned positions at Ilmo, Missouri were not in fact abolished but were transferred to Pine Bluff, Arkansas.

We believe in accepting these new positions Claimants assumed the conditions attached thereto, including rest days. To rule on these facts in any other way or as Claimants request would compound confusion upon confusion.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.