

Award No. 7028
Docket No. TD-7164

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The Louisville & Nashville Railroad Company, hereinafter referred to as "the Carrier" failed to comply with the provisions of the Letter-Agreement of September 25, 1947, as revised August 27, 1953, when it did not in accordance therewith fill the position of chief train dispatcher in its Ravenna, Kentucky, office during the temporary absence of the regular incumbent thereof on May 25 and 26, 1954, and failed to use senior extra train dispatcher L. Treadway for that purpose.

(b) The Carrier shall pay to Mr. L. Treadway the difference between the telegrapher rate which he received for telegrapher service on May 25 and 26, 1954, and the rate contemplated by the August 27, 1953 revision mentioned in above paragraph (a), to which rate he was contractually entitled and which he should have been paid on those dates.

EMPLOYES' STATEMENT OF FACTS: There is a Schedule Agreement between the Louisville & Nashville Railroad Company and its train dispatchers represented by the American Train Dispatchers Association covering Rates of Pay, Rules and Working Conditions, effective April 16, 1948, (Sixth Edition). The above referred to Agreement is a successor to and a revision of a Schedule Agreement between the same parties effective April 1, 1936. The Agreement effective April 16, 1948, is on file with your Honorable Board and by this reference is made a part of this submission as though fully incorporated herein.

On September 25, 1947, a Letter-Agreement was entered into by the parties which is quoted below for the convenience of and ready reference by the Board:

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Washington, D. C.
September 25, 1947

Mr. G. A. Meriwether, General Chairman
American Train Dispatchers Association
Mobile, Alabama

Dear Sir:

You are informed that instructions have been issued to all Superintendents to arrange, effective October 1, 1947, to give Day

In presenting this claim in favor of extra dispatcher Treadway because the chief dispatcher was "absent from his office" on May 25 and a portion of the day May 26, the organization is adding to the letter-agreement something that is not there in an effort to broaden its application. Clearly the letter-agreement is applicable only when the chief dispatcher is "absent" thus constituting a vacancy to be filled.

As chief dispatcher Wilson was not relieved from his duties and responsibilities but was performing them in compliance with operating department rule 714, he was not absent on May 25 or 26. Consequently, there is no basis for the claim of extra dispatcher Treadway and it should, therefore, be declined.

All factual data submitted in support of the carrier's position has been presented to duly authorized representatives of the employees.

Carrier desires opportunity to make suitable response to the employees' submission, and to have oral hearing.

(Exhibits not reproduced.)

OPINION OF BOARD: The factual situation relates to the question of whether or not the Chief Dispatcher in making a trip over the territory under his jurisdiction by rail and highway to inspect equipment, acquaint himself with new trackage and physical changes, was performing his duties as Chief Dispatcher.

There is a conflict in the evidence presented as to calls made to his office and the question to be resolved is: Was he actually on duty on the days in question?

Without going into detail on the facts as the record covers the situation thoroughly, we are of the opinion that it is apparent that on May 25 there is a serious doubt, on the facts presented, that it could be construed that the Chief Dispatcher was performing the duties in his office as contemplated by the Agreement. Therefore, claim will be sustained for one day, May 25, 1954.

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 to extent indicated in Opinion.

AWARD

Claim sustained in modified form as indicated in Opinion for one day, May 25, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.