

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

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

(a) The Texas & New Orleans Railroad Company, hereinafter referred to as the "Carrier", failed to comply with the intent of the Rules of the Agreement between the parties to this dispute, effective April 16, 1945, particularly Rule 19 thereof, as amended, when during the year 1953, it failed to afford train dispatcher L. H. Price of its Victoria, Texas office, a vacation of two weeks (10 working days) with pay; and failed to assign extra train dispatcher P. M. Betts to perform ten days train dispatcher service for which he was qualified and to which he was entitled to perform, to furnish relief for dispatcher, L. H. Price's vacation.

(b) The Carrier shall now compensate extra train dispatcher P. M. Betts for the difference between his straight-time earnings for a ten days period on his telegrapher assignment and what he would have earned in a ten day period at straight-time as a trick train dispatcher during the year 1953.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement, effective April 16, 1945, between the parties to this dispute. Said agreement, and subsequent revisions thereof are on file with your Honorable Board and are, by this reference, made a part of this submission as though fully incorporated herein, and will, hereafter, be referred to as "the agreement".

This claim is based principally on the provisions of Rule 19 of Article VIII. The pertinent provisions of said Rule 19 read as follows:

"Vacations. * * *

"Effective with the calendar year 1951, and thereafter, an annual vacation of two weeks (10 working days) with pay will be granted each dispatcher covered by the Scope of the current Agreement, who rendered compensated dispatcher service on not less than one hundred thirty-three (133) days during the preceding calendar year, under the following conditions:

within the limitations of the Collective Agreement in the interests of efficiency and economy." (Emphasis added.)

CONCLUSIONS

Carrier has shown wherein the claim of the instant case was barred by a specific time limitation set out in the ATDA Agreement. It was also shown that the claim, if it otherwise had valid existence, is not properly before the Third Division, as it was not handled on the property in the usual manner as required by agreements and the Railway Labor Act.

In event the Board should decide to consider the claim upon merits, Carrier has shown that the Vacation Rule of the Dispatchers' Agreement expressly recognizes the procedure and handling that has been complained of by the Organization; that their claim is in reality an attempt to amend the Vacation Rule by writing into that rule a penalty not now expressed, or by misconstruing language contained therein to impose a limitation manifestly not intended. Carrier has shown that application of the agreement according to its literal wording will bring about the result intended by its writers. Such application will require a denial of the instant case on merits, and the Board is urged to so rule.

All documentary matter used as exhibits has been, by copy or original, in the possession of authorized Organization representatives prior to the time of this submission.

Wherefore, premises considered, the Board is urged to in all things deny the claim of the instant case.

(Exhibits not reproduced.)

OPINION OF BOARD: Train Dispatcher L. H. Price is regularly assigned to the position of relief train dispatcher in the Carrier's train-dispatching office at Victoria, Texas. Claimant P. M. Betts is employed as a telegrapher-clerk in the same office and he is also an extra train dispatcher and serves in the latter capacity on one of his rest days in this office. According to the record, Dispatcher Price's annual vacation was scheduled to begin March 15, 1953 and end March 27, 1953. Claiming that there was no extra dispatcher available to relieve him, the Carrier required Price to work his vacation period and paid him in lieu thereof. Mr. Price raised no objection to this arrangement.

But on April 21, 1953, Claimant Betts, as the senior extra train dispatcher in the Victoria office, filed a claim for the difference between what he had earned as a telegrapher clerk during the two weeks in question and what he might have earned as an extra train dispatcher.

In view of the fact that Claimant was employed on his regular job at the time of the scheduled vacation period of Dispatcher Price, we can see no proper basis for this claim. Article VIII, Rule 19, of the parties' Agreement provides two alternatives: (1) **When vacations are afforded;** and (2) **When vacations are not afforded.** In the latter case "payment in lieu thereof will be made **not later than January of the following year . . .**" (Emphasis added.)

In the instant case, the Carrier, with the concurrence of the employe directly involved, exercised the discretion which the second alternative in Rule 19 specifies and promptly paid Dispatcher Price for the vacation period which he elected to spend on the job. Dispatcher Price was not afforded a vacation, but he was paid in lieu thereof. In this way the terms of the Agreement were complied with.

There is no basis for a claim by a second employe where the vacation was worked and pay in lieu thereof was offered and accepted.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1956.