

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**MISSOURI PACIFIC LINES (International-Great Northern R.R.
Company and Gulf Coast Lines)**

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

(a) The Missouri Pacific Lines in Texas and Louisiana, namely the Gulf Coast Lines, and the International-Great Northern Railroad Company hereinafter referred to as the "Carrier" or "Carriers", failed to comply with the wording and intent of Section (b) of Article IX, of each of the separate collective bargaining agreements of the two properties named herein, effective April 1, 1948 and May 1, 1948 respectively between the parties, when effective with the year 1955, employees covered by the scope of their respective agreements, were denied as liberal transportation privileges for themselves and their dependents as is provided in the rule, and as prior to 1955 had been the practice.

(b) The Carrier shall now comply with the provisions of Article IX (b) by granting the train dispatchers and their dependents as liberal transportation privileges as they had in accordance therewith received prior to 1955, and as have been extended to other subordinate officials on the properties.

EMPLOYEES' STATEMENT OF FACTS: There is a Schedule Agreement between the parties to this dispute governing the hours of service and working conditions of train dispatchers. The Agreement on the Gulf Coast Lines was effective April 1, 1948, and the Agreement on the International-Great Northern Railroad Company was effective May 1, 1948. Said Agreements and revisions thereof are on file with your Honorable Board and by this reference are made a part of this submission as though fully incorporated herein. The following rules are pertinent to adjudication of this dispute:

"ARTICLE I

"(a) SCOPE.

"This Agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher', as hereinafter used, shall include Night Chief, Assistant Chief, trick, relief

"Claimants assert that Carrier violated Article 22 (a) of the agreement, which provides: 'Employees covered by this schedule and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in the service.' Obviously this rule does not place any obligation upon the Carrier to grant free transportation to any one; all it requires is that those covered by Telegraphers' schedule will be given the same consideration in this respect as other employees in the service. The burden rests upon one asserting a claim under this rule to establish that he has not received the same consideration as others in the service, and claimant has not only failed but made no attempt to meet this burden. This Board has no authority to make rules relating to the granting of free transportation which would be the effect of a sustaining award under the facts presented."

And in Award 4193 the following appears in the Opinion of Board:

"It is not the function of this Board to interfere with the administration of privileges which are based solely on the generosity of the Carrier."

Attention of the Board is also directed to the fact that on or about May 22, 1953 certain of the non-operating labor organizations served a request on the railroads nationally which, had it been granted, would have given the employees agreement rights to transportation. This request was denied by the railroads because they held it was not a negotiable matter under the Railway Labor Act. This request, among others, was referred to Emergency Board No. 106, and that Board in its report to the President of the United States recommended that the request be withdrawn, stating:

"It is a gratuity except when directly related to the employees' services and as such should be left under the control of the Carriers."

We believe that the foregoing quotations from Awards 1789 and 4193, both of which involve the issuance of free transportation are equally applicable to and should be controlling in the Board's determination of the present controversy.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

OPINION OF BOARD: The facts of this case are not in dispute. Prior to 1955, Carrier's train dispatchers were issued system annual card passes, known as "JA" passes, irrespective of length of service with the Carrier. On August 3, 1954, the Pass Bureau addressed the following instructions to all departments concerning the request for annual passes in 1955:

"TO ALL DEPARTMENTS:

New Annual passes will be issued for the year 1955.

Please have long service lists prepared for those employees who will be eligible to receive passes as of January 1, 1955, on the following basis:

5 to 10 years—GCL-IGN pass for employee only.

10 to 25 years—GCL-IGN pass for employee, wife and dependent children 17 years of age and under.

25 years & over—System pass for employee, wife and dependent children 17 years of age and under.

40 years & over—System pass for self, wife and dependent children 17 years of age and under.

The names, ages and sex of children should be shown.

Lists should be prepared under different groups, that is—all 5 year employes together; 10 year employes together; 25 year employes together and another list for employes with more than 40 years service. These should be listed alphabetically with double space between each name. (See below)

Form to be followed in drawing up lists is shown below:

Doe, J. T.	Conductor	Houston 10 years service
Doe, Mrs. J. T., Sons Carl (17) John (14) and Dtr Ruth (10)	Wife, dep sons and dtr of Conductor	Houston 10 years service
Smith, John (Col)	Brakeman	Kingsville 10 years service
Smith, Mary and son George (7) (Col)	Wife and dep son of John Smith, Brakeman	Kingsville 10 years service

Separate lists should be prepared for employes requiring annual passes for transaction of company business. Where an employe has been furnished annual pass for company business travel, and under service rules is eligible to receive pass for himself, wife and children, the names of wife and children only should be shown on service list. Do not request annual pass for employe for transaction of company business unless they are actually required to use pass at least six times a year on company business. If they are not eligible for service annual and do not travel often enough to require annual pass, trip pass can be furnished on short notice in cases of emergencies. The Head of each Department should check requests carefully and see that no annual passes are requested for company business travel unless absolutely necessary.

It has been brought to our attention that much abuse has been made in the use of *impersonal passes*. We ask your cooperation in requesting and handling of all impersonal annual passes. Request only as many as are necessary and limit them to actual territory needed. They should be given to employe when traveling on company business and taken up when not in company service and the office requesting them should be responsible for them at all times.

I earnestly ask that you have the service lists in my office not later than September 15th. Your cooperation will be very much appreciated.

P. E. MERKENT
Manager
Pass Bureau"

The instant claim is that in changing the practice of issuing annual "JA" passes to all train dispatchers to the regulations set forth in the above memorandum, the Carrier violated Article IX, (b), of the parties' Agreement of May 1, 1948. This provision is as follows:

"(b) Transportation.

"Train dispatchers and their dependents will be granted as liberal transportation privileges as are accorded other subordinate officials and employes."

We note that the new regulations, to be made effective for 1955, applied to all departments. We fail to see wherein such regulations discriminate

adversely to the employees of any department. While the new regulations limited the number of annual passes, the limitation does not discriminate against train dispatchers as such. The distinction is made on the basis of those needing passes for transaction of company business. Regardless of department, those actually required to use a pass for company business at least six times a year qualify for the annual pass. Where the conditions are the same, the travel allowance is the same.

Our attention is called to the fact that certain employees in a department other than Train Dispatchers have gotten annual passes under the new regulations, while Claimants have not. This could be for the simple reason that the employees in question are required to travel more than six times per year on company business and Claimants have not been required to do the same.

This claim is, in effect, seeking preferential treatment for train dispatchers. Because they formerly had the annual passes, and some subordinate officials in other departments have qualified for annual passes under the new regulations, it is the contention of Claimants that they do not now enjoy as liberal transportation privileges as these other subordinate officials. If we interpret Article IX, (b) to mean that train dispatchers must all be given the same transportation allowance as the most liberal allowance given to any subordinate official, regardless of what the latter does to establish his qualifications, then train dispatchers as a group are given preferential treatment.

We do not believe that the parties intended to provide more liberal transportation privileges for train dispatchers than for other subordinate officials. All Article IX, (b) guarantees is that "train dispatchers and their dependents will be granted as liberal transportation privileges as are accorded other subordinate officials and employees." This provides for no special treatment. It only assures fair and equitable consideration. The Carrier's regulations issued by the Pass Bureau on August 3, 1954, apply to all departments alike. These regulations are in full compliance with what seems to us a reasonable interpretation of Article IX, (b).

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1957.