

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WABASH RAILROAD COMPANY

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

(a) The Wabash Railroad Company, hereinafter referred to as "the Carrier," acted contrary to the wording and intent of the rules of the Schedule Agreement between the parties, particularly Section (h) of Article 4, effective May 1, 1946, when on June 17, 1955, it failed to use Mr. W. K. Martin on the position of night chief train dispatcher in its Peru, Indiana office, hours 9:00 P. M. to 6:00 A. M., and

(b) The Carrier shall now compensate Extra Train Dispatcher W. K. Martin an amount representing the difference between what he was paid as telegrapher and what he would have received at straight-time rate of pay as night chief train dispatcher if he had been used on that position on June 17, 1955 as provided in Section (h) of Article 4.

EMPLOYEES' STATEMENT OF FACTS: An agreement between the Wabash Railroad Company and the Train Dispatchers employed thereon represented by the American Train Dispatchers Association, effective May 1, 1946, and revisions thereof, are on file with your Honorable Board and, by this reference, made a part of this submission as though fully incorporated herein. Said Agreement will hereinafter be referred to as "the Agreement."

Pertinent rules of the Agreement read as follows:

"ARTICLE 1.

"(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 on each operating division which position shall not be subject to any of the provisions of this agreement."

The enforcement of a provision of a contract must yield to superior authority of the law. See Award 4975." (Emphasis ours.)

At the time the Carrier originally declined to allow Night Chief Dispatcher Henderson to lay off on June 17, 1955, there were no telegraphers available to relieve an extra dispatcher (or Mr. Martin) on his regular assignment as telegrapher. For that reason, Mr. Henderson's request to be off on June 17, 1955, was declined, and in that connection attention of this Board is called to the fact that there is no rule in the Dispatchers' Agreement which places an obligation upon the carrier to allow a man to lay off when there are no men to relieve him without violating the Hours of Service Law.

Prior to the arrangement made on the evening of June 17, 1955, between Mr. Sorenson and Mr. Henderson to have Mr. Sorenson work as Night Chief Dispatcher that night, the Carrier had no knowledge that Mr. Henderson would not work that night, and prior to that arrangement, Mr. Martin had worked from 7:00 A. M. to 3:00 P. M. on his regular assignment as telegrapher-clerk that date. He therefore could not work as an extra dispatcher on the position of night chief dispatcher that night without violating the Hours of Service Law.

Inasmuch as Mr. Martin was not available as an extra dispatcher under the Hours of Service Law at the time Mr. Henderson and Mr. Sorenson made the arrangement to have Mr. Sorenson work as night chief dispatcher that night, Article 4(h) of the Dispatchers' Agreement has no application.

In view of all the foregoing, the claim presented on behalf of Extra Train Dispatcher Martin should be denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

OPINION OF BOARD: This is a companion docket of TD-8329. The alleged violation claimed in this case grew out of the same set of facts involved in TD-8329. On the date in question when C. S. Sorenson performed service as night chief dispatcher, the Petitioner contends that under the rules of the Agreement Extra Dispatcher W. K. Martin should have been used. Claimant Martin was regularly assigned as Telegrapher-Clerk at Logansport, Indiana, from 7:00 A. M. to 3:00 P. M. The record shows that he worked his regular assignment on the claim date for which he was allowed the usual pay.

Petitioner relies upon Article 4, Section (h) of the effective Agreement. This section reads:

"When an extra dispatcher is needed, the senior extra dispatcher shall be called and shall be required to report unless on leave of absence, or prevented by sickness or other justifiable reasons, which reasons must be given to the Chief Dispatcher in writing, and a copy will be furnished the office chairman on request."

The record shows that the arrangement whereby Sorenson worked the trick in question developed some hours after Claimant Martin had worked his regular trick. Under such circumstances it was impossible for the Carrier to call and use Martin without being in violation of the Hours of Service law. This is undisputed in the record. Had such an arrangement with Sorenson been made prior to Martin's regular trick, then the Carrier would have been in clear violation of the cited contract provision.

Award 5003 of the Third Division has been cited in support of a sustaining award. This award, and the facts involved in the docket, were clearly distinguishable from the instant case. There a vacancy occurred and the Carrier failed to call the proper man. There was no Hours of Service law

involvement as here, nor was there an unanticipated occurrence, which allowed the Hours of Service law to intervene and bar the use of the proper individual.

Under the circumstances involved here, the claim must be denied.

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 the Carrier did not violate the contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.