

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

**PARTIES TO DISPUTE:**

AMERICAN TRAIN DISPATCHERS ASSOCIATION

FORT WORTH AND DENVER RAILWAY COMPANY

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

(a) The Fort Worth and Denver Railway Company, hereinafter referred to as "the Carrier," failed to comply with the intent of the current Agreement between the parties, particularly paragraph (g) of Rule 5 thereof, when on September 24, 1954, it failed to use a qualified train dispatcher in the seniority district to effect relief of the Chief Train Dispatcher in the Wichita Falls, Texas, office of the Carrier, on which date the regular Chief Train Dispatcher was absent and out of the city for the entire day, and

(b) The Carrier shall now compensate Train Dispatcher Zeb Ellis, Jr., one day's pay for September 24, 1954, at the Chief Train Dispatcher's rate of pay, on which date Claimant Zeb Ellis, Jr., was the senior extra train dispatcher in the seniority district, and was available and qualified for this service.

**EMPLOYES' STATEMENT OF FACTS:** There is a Schedule Agreement between the Fort Worth and Denver Railway Company and the American Train Dispatchers Association, covering hours of service and working conditions governing train dispatchers, effective May 1, 1950. Said Agreement is on file with your Honorable Board and by this reference is made a part of this submission as though fully incorporated herein.

At the time the instant dispute arose, Claimant Train Dispatcher Zeb Ellis, Jr., was an extra train dispatcher in the Wichita Falls, Texas, office of the Carrier.

Rule 1. SCOPE of the Agreement effective May 1, 1950, provides the following:

"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 dispatching office.

not being so clearly explicit, it was subject to construction, which is not the case with Rule 5 (g).

However, judicial notice may be taken of the similarity that does exist between the circumstances in the cases in Award No. 7028 and this one wherein the Chief Train Dispatcher was at his office a part of the day—from 7 A. M. until after 8 A. M. in this case, and as indicated herein above on May 24th and 26th in the L&N case, wherein no claim was made for the 24th and claim for the 26th was denied.

Petitioner has placed reliance in the provisions of Rule 5 (g) for support of the claim. One of the three conditions stipulated in Rule 5 (g) must be shown to be present beyond question of doubt if Petitioner is to prevail. It must be shown that the claim date was a regular rest day for the Chief Train Dispatcher, and it is not even contended that it was; or it must be shown that he was on vacation, and no such contention has been made; or it must be shown that he was on other leave of absence. In the light of the conclusive evidence cited herein, it positively cannot be shown that he was on leave of absence. Therefore, the claim is definitely not supported by provisions of Rule 5 (g) and must be denied.

The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced)

**OPINION OF BOARD:** We are called upon here to interpret Rule 5 (g) of the agreement, particularly the underscored part thereof, and apply it to the factual situation present.

**"Rule 5. Rest Days and Relief Service.**

(g) Qualified train dispatchers in the seniority district will be used to effect relief of Chief Train Dispatchers for their regular rest days, for vacations, and for other periods of leave of absence."

On the claim date, the Chief Train Dispatcher, with headquarters at Wichita Falls, was instructed by proper authority to attend a 10:30 A. M. meeting in Childress held for the purpose of reviewing instructions on the application of a new National Agreement. Carrier in its rebuttal states that the recognized work hours of this position are 8:00 A. M., to 5:00 P. M. Chief Dispatcher arrived at his office shortly before 8 A. M., and allegedly performed the duties then considered necessary for the day's operation in his office and proceeded to Childress by automobile, a trip of 105 miles requiring approximately two and one-half hours. Childress is the junction of the Carrier's two operating divisions under the jurisdiction of the Chief Dispatcher.

Although the meeting was held at the Childress Hotel, Chief Dispatcher is alleged to have contacted his office in Wichita Falls by telephone during the meeting in the morning, during the noon hour, before leaving at 4 P. M., and further at 6:30 P. M. upon his return to Wichita Falls, again riding by automobile. There is no question that he was available to his office by telephone and did keep in touch with them.

The matter was exhaustively argued by the panel members and we were impressed at first by the employees' arguments bearing on physical absence of the Chief Dispatcher from his office. However, the point at issue is whether or not we can read the Chief Dispatcher's activities and physical absence from his office on the day in question into the language and meaning of the underlined portion of the Rule set forth above.

Award 7028 cannot be held to be applicable here for the agreement there interpreted expressed the absence referred to as "or otherwise temporarily absent for one or more days."

In Rule 5 (g) we have "other periods of leave of absence." Generally a "leave of absence" implies the request for and granting of. In the context of Rule 5 (g) referring as it does to "regular rest days" "vacations" a consistent and harmonious holding would require us to find that "other periods of leave of absence" are those periods when the Chief Train Dispatcher is relieved of duty for a certain specified time. He could not be on leave of absence and still be in the employ of his master. Putting it another way, we believe the leave of absence referred to implies the right to be away from the requirements of the job, granted by someone in authority. This was not the case 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 Agreement was not violated.

#### AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May, 1958.