

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

TENNESSEE CENTRAL RAILWAY COMPANY

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

(a) The Tennessee Central Railway Company, hereinafter referred to as the "Carrier" acted contrary to the wording and intent of Memorandum Agreement signed by the parties on January 29, 1946, and effective February 1, 1946, when effective September 1, 1949, it failed and continues to fail and refuse to compensate train dispatchers who relieve the excepted chief train dispatcher in its Nashville, Tennessee office, on his weekly rest days, vacations and other periods of absence in accordance with Section (b) of Article 7, as provided in said Memorandum Agreement.

(b) The Carrier shall now compensate regularly assigned relief Train Dispatcher W. R. Williams and/or any other employee who has heretofore or may hereafter perform service on the position of the excepted chief train dispatcher for rest day, vacation or other periods of absence, the difference in the trick train dispatcher's daily rate which he was paid and the daily rate he would have received under the provisions of Article 7(b), commencing with October 11, 1955 (the date on which General Chairman W. R. Williams protested the Carrier's non-compliance with the Agreement provisions) and ending when the violation has been corrected.

(c) A joint check of the Carrier's records involved shall be made by the Carrier and the General Chairmen of the American Train Dispatchers Association to determine those entitled to the payments required by paragraph (b) of this claim.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, effective February 1, 1946, and revisions thereof; and Memorandum Agreement, effective February 1, 1946, are on file with your Honor-

Agreement, which was negotiated and signed concurrently with the schedule agreement, and further, that the relieving train dispatcher "will be subject to the working conditions applicable to the position" of chief train dispatcher. To require what Employees are here claiming, this special Memorandum Agreement would have had to be changed along the lines of their suggestion as basis for settlement (Carrier's Exhibit No. 3) wherein reference is made to "Section (b), Article 7 of the **currently** effective agreement." (Emphasis supplied.)

Carrier further submits that its application of the rate as referred to over the period of more than six years after September 1, 1949 without protest of any kind from Employees establishes the correctness of Carrier's position on the requirements of the rules in this respect and its application of the rate in question thereunder. It so happened that Mr. W. R. Williams, the General Chairman, did substantially all of the relief work on the position of Chief Dispatcher during that period.

The pay of a train dispatcher for relieving chief train dispatcher is governed solely by the terms of the special Memorandum Agreement which became effective February 1, 1946, concurrently with the general schedule agreement negotiated with Dispatchers, and while the schedule agreement has been amended to provide for a shorter work week for train dispatchers, there has been no change whatever in the Memorandum Agreement relating to relief of chief train dispatcher.

Carrier respectfully submits that the compensation allowed train dispatchers for relieving chief train dispatchers is in strict compliance with the terms of the governing special agreement, which agreement could not possibly be affected by any of the Awards of your Board.

Carrier further submits that the governing agreement having been complied with, the claim is not supported by a rule or rules, that Employees have acquiesced in the rate applied by Carrier for a period of more than six years, and are in fact asking for a new rule.

Carrier, therefore, respectfully requests that the claim be denied.

* * * * *

Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issue or issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant case involves the question of proper rate of pay for relief services on the Chief Dispatcher's position at Carrier's Nashville, Tennessee office.

The claimant herein is a regularly assigned relief train dispatcher and has performed substantially all of the relief work on the position of Chief

Dispatcher during the period involved. In the Nashville, Tennessee dispatching office the Carrier has one Chief Dispatcher, three Trick Dispatchers and the necessary Relief and Textra Dispatchers. It is agreed that the Chief Dispatcher's position is excluded from the Scope Rule of the Agreement.

Prior to September 1, 1949, the Chief Dispatcher and all Trick Dispatchers worked six days a week, and had one assigned rest day. Since September 1, 1949, Trick Train Dispatchers have been subject to the provisions of the Five Day Week Agreement and worked five days each week with two assigned weekly rest days. The excepted Chief Dispatcher continues on a six day work week.

Prior to September 1, 1949, the daily rate of all Dispatchers was computed, pursuant to Article 7 (b), by multiplying the monthly rate of the position involved by twelve and dividing the result by 313—the number of work days in one year on a six day work week basis. Since the Five Day Week Agreement (effective September 1, 1949) the annual working days have been reduced by 52 for Train Dispatchers within the scope of the Agreement, this changes the divisor to 261, instead of 313; however, there has been no change made in computing the daily rate of the excepted Chief Dispatcher.

It is the contention of the Organization that the provisions of Article 7 (b) and the terms of the Memorandum of Agreement are controlling and that the Claimant and other employees who have performed services in providing weekly rest days and other relief service on Carrier's Chief Dispatcher position be properly compensated by using the changed divisor or 261, instead of 313, in figuring their compensation for performing relief services on the Chief Dispatcher's position.

At the time this dispute arose Claimant was regularly assigned as a Relief Train Dispatcher and was regularly assigned to perform one day's relief for the excepted Chief Train Dispatcher.

A Memorandum Agreement effective February 1, 1946, is the only Agreement in existence relating to the position of Chief Train Dispatcher and relief work on that position. It reads as follows:

"MEMORANDUM AGREEMENT

between

Tennessee Central Railway Company

and

Its Train Dispatchers, represented

By the American Train Dispatchers Association

* * * * *

"In connection with negotiations for working agreement covering train dispatchers, the following is hereby agreed to, effective February 1, 1946:

"While the positions of chief train dispatcher are not included in the agreement between Tennessee Central Railway Company and its Train Dispatchers, represented by American Train Dispatchers Association, it is understood qualified train dispatchers, when available, will be used to afford chief train dispatchers one relief day each week; also for annual vacations and other periods of absence from their positions, provided this can be done without penalizing the Railway Company by the payment of time and one-half rate to any train dispatcher by reason of using a train dispatcher for such relief purposes and provided further that the train dispatcher who relieves the chief train dispatcher will be paid at the chief train dispatcher's rate for such service on the basis set forth in Article 7, paragraph (b), and will be subject to the working conditions applicable to the position."

The question now arises as to whether the relief train dispatchers are outside of the scope of the Agreement when they relieve a Chief Train Dispatcher as in the instant case.

We find that when the parties revised the Memorandum Agreement to conform with the Five Day Week Agreement effective September 1, 1949, Article 7 (b) was revised only to the extent that the figure "261" was inserted and intended to be the new divisor in computing the daily rate for employes coming under the Agreement. The Chief Train Dispatcher, it is agreed, was not affected by the change for that position is exempt; however, there is no such exemption extending to other dispatchers who perform weekly rest day or other relief service on the Chief Dispatcher position.

The work performed in the position of Chief Train Dispatcher when he is absent is Train Dispatcher's work and the February 1, 1946 Memorandum Agreement further provides "that the train dispatcher who relieves the Chief Train Dispatcher will be paid at the Chief Train Dispatcher's rate for such service on the basis set forth in Article 7, paragraph (b), and will be subject to the working conditions applicable to the position."

There can be only one Chief Train Dispatcher in each dispatching office and he is the only dispatcher who is excepted from the Scope Rule. Because a train dispatcher performs the work of the excepted Chief Dispatcher that does not change his classification when there is one holding the position or appointment of Chief Dispatcher.

We do not agree with the Carrier's further contention that the claim should be denied on the ground that the claim was not asserted for some six years. This Board has held that acquiescence of the employes to the interpretation placed on rules of an agreement for a period of years and their understanding as to the manner in which it applied to them, can operate only to defeat reparations for past violations. It does not change the collective Agreement or deprive the Organization of the right to insist upon compliance with the rules from the time the violation is called to the attention of the Carrier.

From the precedents of this Board and the language of the Agreement we must conclude that a Train Dispatcher who relieves a Chief Train Dispatcher is not removed on such days from the scope of his Agreement.

This being so, then the rules of the Dispatcher's Agreement apply, and in particular the basis of payment is that established by Rule 7 (b) applied to the daily rate of the Chief Dispatcher calculated by multiplying the monthly rate by 12 and dividing the result by 261. As this was not the method followed on the days in question, an affirmative award is in order.

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;

That the Carrier is in violation of the Agreement; and

That the Claimant, W. R. Williams and/or any other employe, commencing with the 11th day of October, 1955, who has heretofore or may hereafter perform service on the position of the Chief Train Dispatcher in Carrier's Nashville, Tennessee office, for rest day, vacation or other periods of absence, be paid at the rate established by Rule 7 (b) as outlined above.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.