

Award No. 11286

Docket No. TD-12177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

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

(a) The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, hereinafter referred to as "the Carrier," violated the currently effective schedule agreement between the Carrier and the claimant organization, Rules 1 (a) and 4 (a) thereof in particular, when it compensated Train Dispatcher J. Tollefson at pro rata rate instead of at time and one-half rate for service performed on the Chief Train Dispatcher position in the Carrier's Shoreham, Minnesota, train dispatching office on June 29, July 6, and August 10, 1959.

(b) The Carrier shall now be required to additionally compensate Claimant J. Tollefson in an amount representing the difference between compensation paid at pro rata rate and the time and one-half rate to which he was contractually entitled for each of the dates specified in paragraph (a) of this Statement of Claim.

EMPLOYEES' STATEMENT OF FACTS: There exists an agreement between the parties to this dispute bearing an effective date of May 1, 1943, subsequently amended including revisions effective September 1, 1949 and January 1, 1954, governing compensation, hours of service and working conditions of train dispatchers. Copy of the May 1, 1943 agreement and subsequent amendments thereto are on file with your Honorable Board and are, by this reference made a part of this submission as though fully incorporated herein.

For ready reference the rules pertinent to the adjudication of this claim are:

"PREFACE

"These rules shall govern the hours of service and working conditions of train dispatchers employed by the Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

The organization has based their claim on Rules 1 (a) and 4 (a) of the Dispatchers' rules and working conditions agreement. Rule 1 (a) defines the term "train dispatcher", excepts the Chief Train Dispatcher, and provides that necessary relief of the Chief will be performed by train dispatchers from the office involved. It does not prescribe in what manner the relieving train dispatcher's pay will be computed nor does it provide for penalty pay for work in excess of 5 consecutive days relief service.

Rule 4 is entitled Rest Day and Section (a) provides that regularly assigned train dispatchers will have two regularly assigned rest days per week and if required to perform service on such rest days will be paid at rate of time and one-half. Extra train dispatchers who are required to work as a train dispatcher in excess of five consecutive days shall be paid the basic straight time rate for work on the sixth or seventh day.

There is also a note appended to Rule 4 which reads:

"It will not be deemed a violation of this agreement for a train dispatcher to work in excess of five (5) consecutive days due to making change of assignments, in which case he will assume the relief days of the position to which he transfers."

It is Carrier's position that this note is applicable in instances where a train dispatcher transfers to the position of Chief Train Dispatcher for the purpose of affording vacation relief. It has always been understood that in such instances the relieving dispatcher assumes all the conditions of the Chief's position including rest days and this note affirms this understanding. It also stipulates that under such circumstances work in excess of 5 consecutive days is not a violation of the Rest Day rule.

It is interesting to note that the organization is not progressing this claim on the basis that the claimant performed service on the rest days assigned to his regular position. This substantiates what Carrier has recited with respect to the dispatcher assuming the rest days of the position relieving on. Instead the organization throughout its handling on the property referred to service performed on the Chief Train Dispatcher's position "on the 6th consecutive day". The only reference to penalty for work performed on the sixth or seventh consecutive days is in the third paragraph of 4 (a). However, this paragraph is not applicable in the instant dispute as it refers only to extra train dispatchers required to work as train dispatchers.

In summary Carrier has shown that both past practice and the note under the rule dealing with rest days support its contention that a train dispatcher relieving the Chief Train Dispatcher assumes the relief days and conditions attaching thereto. The rules cited by the organization do not support their claim for punitive pay for service on the sixth consecutive day in circumstances such as these. Carrier contends that the claim is without merit and respectfully prays that it be denied accordingly.

All data in support of Carrier's position in connection with this claim has been presented to the duly authorized representative of the employees.

OPINION OF BOARD: The Claimant herein named, holds a regular assignment as Trick Train Dispatcher, at Shoreham, Minnesota, with hours of assignment 8:00 A. M. to 4:00 P. M., Tuesday through Saturday and assigned rest days Sunday and Monday.

The Organization makes claim on behalf of said Claimant for compensation, for the difference paid Claimant between the pro rata rate and one and one-half time rate, for work performed in the Chief Dispatchers position on claim dates. Contention is further made that on such claim dates, all being on a Monday, a rest day of the Claimant on his regular assigned position as Trick Train Dispatcher, and as provided in Scope Rule 1 (a), the rules of the Agreement herein cover train dispatchers when relieving the Chief Train Dispatcher, and that as a consequence of performing service as Chief Train Dispatcher, said Claimant, on the sixth consecutive day as Chief Train Dispatcher, he is entitled to compensation at the one and one-half rate as provided by Rule 4 (a).

Carrier contends that Claimant working the Chief Train Dispatchers Position, during a vacation period of the Chief Train Dispatcher, transferred to such position and by so doing Claimant assumes all the conditions of such position, including rest days assigned the Chief Train Dispatchers position, and that the Claimant here has been properly compensated. Carrier further relies on the provisions of the NOTE, made a part of Rule 4, as follows:

"NOTE: It will not be deemed a violation of this agreement for a train dispatcher to work in excess of five (5) consecutive days due to making change of assignments, in which case he will assume the relief days of the position to which he transfers."

From the record here before us, we are well aware of the holding in Award 5244 by this Division which is favorable to the contention of the Organization here. However, after a review of such award, and the docket in such cited case, we find no provision contained, as provided by the NOTE in the matter before us here.

We conclude that the Claimant here did transfer from his regular assigned position to the Chief Train Dispatchers position. That by so doing, and in relieving the Chief Train Dispatcher, during a vacation period, he assumed the conditions attached to the Chief's position, including rest days, pay, etc. By the provisions of the "NOTE", it is clear that the Claimant is not entitled to a sustaining award here, where work is performed in excess of five consecutive days, since he assumed the relief days of the position to which he transferred.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April 1963.

**LABOR MEMBER'S DISSENT TO AWARD 11286
DOCKET TD-12177**

Award 11286 is in error in attempting to modify Award 5244.

The majority agrees that:

"From the record here before us, we are well aware of the holding in Award 5244 by this Division which is favorable to the contention of the Organization here."

Award 11286 should have held in accordance with this prior Award 5244 which states:

"The question now arises as to whether the train dispatcher is outside of the Scope of the Agreement when he relieves a Chief Train Dispatcher under the circumstances of this case. The Carrier contends the affirmative on the ground that, when the train dispatcher relieves the Chief Train Dispatcher, he is removed from the Scope of his Agreement because such position is expressly excepted there from the Scope Rule. We do not find, however, that the Agreement supports this contention.

"The work performed in the position of Chief Train Dispatcher when he is absent is train dispatcher's work under Rule 1 (a) of the current Agreement. While one position in each dispatching office is excepted from the Agreement, such exception does not apply, under this rule, to train dispatchers who perform the work in the absence of the Chief Dispatcher. The language 'shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatcher service' clearly imports that only the one Chief Dispatcher not regularly assigned to a trick is excepted from the Scope.

"Train dispatchers may perform the work of the excepted Chief Dispatcher but that does not change them from train dispatchers when there is one holding the appointment of Chief Dispatcher. On such days the relief train dispatcher may be acting Chief Dispatcher but he is yet a train dispatcher. Awards 2905, 3344, 5202. It should be noted that Rule 1 (a) excepts only 'one chief dispatcher'.

"From the precedents of this Board and the language of the Agreement we must conclude that a train dispatcher regularly assigned to relieve a Chief Train Dispatcher is not removed on such days from the Scope of his Agreement.

"This being so, then the rules of the Dispatchers' Agreement apply, and in particular the basis of payment is that established by Rule 6 (b) applied to the daily rate of the Chief Dispatcher calculated as indicated hereinabove. As this was not the method followed on the days in question, an affirmative award is in order."

Instead the majority permitted itself to be misled by Carrier's reliance on the Note to Rule 4. It is the employees contention that this Note is completely inapplicable to the situation at hand.

It is apparent from even a casual reading of this note that only the plural is used in referring to relief days. No mention whatever is made of Relief Day

(singular) which is applicable to the Chief position which has only one relief day.

It is evident that the note was included in Rule 4 for a specific purpose, that of relieving Carrier from payment of punitive time where a dispatcher transferred from one position fully covered by the Agreement (with 2 Relief Days) to another position fully covered by the Agreement (with 2 Relief Days) and in the process of such transfer was required to work in excess of five consecutive days.

But certainly this note never was intended to apply to any so-called transfer from a position fully covered by the Agreement (with 2 Rest Days) to the position of Chief Dispatcher (with only one rest day) the incumbent of such position being excepted from certain rules of the Agreement.

Had this note been meant to apply to such circumstances it would have referred to both singular and plural relief situations and would have stated:

“. . . in which case he will assume the relief day or days of the position to which he transfers.” (Emphasis ours.)

Only by the insertion of the aforementioned emphasized words could this note be made applicable to the Chief Train Dispatcher position.

These words are NOT in the note and this Board has no authority, under the guise of interpretation, to add to or amend the rule as written.

The majority in discussing the “Note” even admits to the plurality of the situation by stating:

“That by so doing, and in relieving the Chief Train Dispatcher, during a vacation period, he assumed the conditions attached to the Chief’s position, including rest days, pay, etc.” (Emphasis ours.)

The majority speaks of the rest days of a position on which there is only one rest day each week instead of two regularly assigned rest days of all other positions to which the Note is applicable ONLY.

Awards 2943, 2944, 2986, 3096, 3344, 4012, 5202, 5244, 5371, 5659, 5716, 5829, 5904, 5975, 6292, 6581, 6583, 6746 and 7914, all concerning Chief Dispatchers were referred to the majority for study.

In Interpretation No. 1 to Award 5829 it is stated:

“It was our intention that the rest day of the incumbent of the position of excepted chief train dispatcher should not be affected by our Award.

“The work on rest days of the excepted chief train dispatcher belongs to train dispatchers, but there was nothing in the record which would give this Board the right to increase those rest days, insofar as the incumbent might be concerned.

“In other words, the increase in rest days for chief train dispatchers is to apply only to those filling the positions on a temporary basis.”

Thus it may be seen that this is the identical situation here present.

Even conceding that the Claimant transferred to the Chief Position, either by choice or at the direction of the Carrier, it can be clearly seen that he was entitled to punitive time if required to work on one of his regularly assigned rest days, which in this case was each Monday.

For the foregoing and other reasons, Award 11286 is palpably incorrect and dissent is hereby registered.

R. H. Hack