

Award No. 16557
Docket No. TD-17003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY

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

(a) The Lehigh & Hudson River Railway Company (hereinafter referred to as "the Carrier"), violated the currently effective schedule agreement between the parties, Articles 1 and 7 thereof in particular, by its failure to properly compensate each of the named individual claimants for service performed on each of the dates hereinafter specified.

(b) The Carrier shall now compensate each of the following named individual claimants for the specified dates in the amount representing the difference between what they were compensated for services on said dates and the daily rate of Chief Dispatcher, \$39.44 per day, said claimants and dates being as follows:

Name of Claimant	Dates (1965)
W. T. Wintermute	November 8, 9, 10, 11, 12 time and one half working relief day, 14, 15, 16, 17, 18, 21, 22, 23, 24, 29, 30 December 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 19, 20, 21, 22, 23, 12
F. J. Percival	November 10, 13, (4 hours at time and one half account working 12 consecutive hours) 17, 24 December 1, 15, 22, 29 September 29, 1965
J. E. Flood	September 18, 19, 20, 21 November 7, 8, 9, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; December 3, 4, 5, 6, 7, 10, 11, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26.

Name of Claimant	Dates (1965)
S. E. Pierce	October 4, 6, 9 November 7, 19, 20, 25, 26, 27, 28 December 12, 16, 18, 24, 25
W. H. Lust	November 11, 12, 13, 8 hours plus 4 hours at time and one half account working through 12 consecutive hours December 2, 3, 4, 8, 16, 17, 23

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, effective June 1, 1946, a copy of which is on file with this Board. The said Agreement is incorporated as a part of this Submission as though fully set out. Although some rules of the Agreement have been revised since the effective date, Articles 1 and 7 referred to in the Statement of Claim herein have not been revised (except Article 7(b) revised effective September 1, 1949) and are here quoted in full for the Board's ready reference:

"ARTICLE 1.

Scope.

(a) The term 'train dispatcher' as hereinafter used (and as defined in Section (b) of this Article), shall be understood to include chief, assistant chief, trick, relief, and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters, and have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more than one chief dispatcher on any division.

Definitions. (b) 1. Chief Train Dispatcher Assistant Chief Train Dispatcher

These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

(2) Trick Train Dispatcher Relief Train Dispatcher Extra Train Dispatcher

These classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

existent, then rate or rates will be determined by agreement between the Management and the Committee.

Attending Court, Investigations, Etc.

(a) A train dispatcher attending court, inquests, investigations or hearings, under instructions from the Railway, will be paid for each day so held the equivalent of his regular assigned hours at pro rata rate for assigned work days and actual time not exceeding eight (8) hours at time and one-half rate for assigned rest days, and actual expenses while away from home. Fees and mileage accruing will be assigned to the Railway. This rule will not apply to a train dispatcher instructed by the Railway to attend a hearing of charges against him, and who is not exonerated of such charges.

Away from Headquarters.

(f) When a train dispatcher is required by Management to leave his regular headquarters for any purpose, he shall, in addition to compensation as provided for by these rules, be paid necessary expenses while away. Extra train dispatchers will be paid on the same basis at trick dispatcher's rate.

Learning Territory.

(g) When, in the opinion of the Chief Train Dispatcher, it is necessary for a train dispatcher to qualify on territory with which he is not familiar, he will be compensated therefor at trick dispatcher's rate.

Combining Positions.

(h) When positions carrying different rates of pay are combined, the combined position shall carry the higher rate of the positions involved."

OPINION OF BOARD: Carrier maintains a Train Dispatcher's office at Warwick, New York, consisting of one Chief Train Dispatcher, Trick Dispatcher, relief and extra Train Dispatchers. The Chief Train Dispatcher, whose position is excluded from the Scope of the Agreement, performs his duties with a Trick Dispatcher during the normal daytime hours. From 4:00 P.M. to 12:00 Midnight, another Trick Dispatcher is on duty by himself and from 12:00 Midnight to 8:00 A.M., the same situation prevails; that is to say, that a third Trick Dispatcher is on duty again by himself.

The Organization alleges that the duties performed by the Trick Dispatchers are those which properly should be performed as Assistant Chief or Chief Dispatcher. Stated another way, the averment is made that the duties, responsibilities and functions outlined in Article 1.(b)1 of the Agreement are being performed by Trick Dispatchers. Since there are no Assistant Chief Dispatcher positions, and no established rates therefor on the property, the Organization demands compensation on certain days representing the difference between that which the Train Dispatchers were paid and the daily rate of the Chief Dispatcher, to which they allege entitlement.

The Organization has presented us with evidence which in substance is a series of logs showing precisely the work accomplished on the days in question. The sole question, therefore, with which we are confronted, is whether or not these duties, responsibilities and functions performed, constitute in effect an assumption of the duties, responsibilities and functions of the higher rated position. There are other issues raised in this record, but the determination of the fundamental question mentioned above is dispositive of the case.

Article 1(b)1 of the Agreement reads as follows:

“ARTICLE 1.

* * * * *

Definitions (b) 1. Chief Train Dispatcher

Assistant Chief Train Dispatcher

These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.”

The duties of the Claimant Trick Dispatchers are outlined in Article 1(b)2 and read:

“(2) Trick Train Dispatcher
Relief Train Dispatcher
Extra Train Dispatcher

These classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.”

We have examined the logs of the Claimants for the specified days and conclude that from a description of the work, they were performing their normal routine function rather than those described as Chief Dispatcher functions. Evidentially speaking, the Organization has not presented us with proof sufficiently substantial to enable us to issue a sustaining award. We will deny the claim.

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 Agreement was not violated.

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 August 1968.