

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**Third Division**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**  
**GREAT NORTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM.—**

"Claim of the employees that:

"(1) The carrier violated and continues to violate the provisions of the Agreement effective Sept. 21, 1931, covering the hours of service and working conditions for train dispatchers, by failing and refusing to bulletin the position in the Klamath Falls, Oregon, office designated as 'Chief Dispatcher,' wherein the duties of the incumbent include the duties of both 'Chief Dispatcher' and 'Trick Dispatcher' which brings the position within the scope of the aforesaid agreement, and that said position should now be bulletined in accordance with the provisions of said agreement.

"(2) Senior train dispatchers, denied the opportunity of securing this position and/or position made vacant by exercise of seniority rights in accordance with said agreement, should be reimbursed for loss sustained by the action of the carrier in appointing junior men to fill said position."

**EMPLOYEES STATEMENT OF FACTS.**—During May 1928, the carrier created a dispatching office at Klamath Falls, Oregon, with one man in charge who performed all train dispatching and work incident thereto and was classified as a Chief Dispatcher.

In December 1931, two additional tricks were established; the Chief Dispatcher, who continued to perform all dispatching work covering his assigned hours, being assigned to the first trick. Mr. J. W. Carman was the Chief Dispatcher, C. E. Foster on 2nd trick, and C. E. McKillips on 3rd trick. In January 1933, one of the trick positions was abolished, displacing Mr. McKillips, who was junior to Mr. Foster, but senior to Mr. Carman. Mr. McKillips made no claim to be permitted to displace Mr. Carman.

In March 1934, the third position was re-established and assigned again, by bulletin, to Mr. McKillips.

Shortly thereafter Mr. Carman became ill and Mr. F. H. Pouder, junior to all three, was assigned to the position temporarily.

In June 1934, Mr. M. E. Joyce, junior to all four of the others, was appointed Acting Chief Dispatcher, displacing Mr. Pouder, and upon the death of Mr. Carman in September 1934, was appointed Chief Dispatcher.

In June 1936, Mr. Joyce was granted leave of absence account sickness and Mr. Foster, the senior dispatcher on the division, was appointed to fill the temporary vacancy, which position he still holds.

There is in evidence an agreement effective September 21, 1931, and Rules 1, 10, 11a, and 12 are cited as having a bearing on this dispute.

These Rules read:

**"RULE 1—SCOPE**

"The term 'Train Dispatcher' as herein used shall be understood to indicate chief, assistant chief, trick, relief, and extra dispatchers, except that one chief dispatcher in each dispatching office shall be exempted from the provisions of this schedule. Such chief dispatcher, however, shall retain, acquire, and accumulate seniority as a train dispatcher, and in the event of his demotion shall return to the office from which promoted and exercise his seniority as provided by Rule 12.

advantage of that title to hold the trick dispatching work exempt from the provisions of the agreement.

**POSITION OF CARRIER.**—The carrier contends that the Scope Rule of the agreement, "provided one exempted position in each dispatching office which was not subject to schedule rules other than as to the acquisition, retention, and accumulation of seniority, provided that such employe was actually appointed as a Chief Dispatcher \* \* \* with the authority necessary thereto."

All dispatchers of every grade are covered by Rule 1, without any differentiation between them, nor any indication that any dispatcher, of any grade, may not perform any dispatching work. Of this consolidated group, one employe, and only one, is exempted. If there be two employes in the same office having the authority of Chief Dispatcher, one of them is exempted, and the second position remains subject to the terms of the schedule. The present case is purely and simply an attempt to limit the kind of service of that one exempt employe.

**OPINION OF BOARD.**—The subject at issue is whether or not the provisions of the Agreement between the American Train Dispatchers Association and The Great Northern Railway Company effective September 21, 1931, covering hours of service and working conditions for train dispatchers, have been violated by the failure or refusal of the carrier to bulletin the position of Chief Dispatcher in the office at Klamath Falls, Oregon, wherein it is claimed the duties of the incumbent include both those of "Chief Dispatcher" and "Trick Dispatcher."

Further, that senior train dispatchers who have been denied the opportunity of exercising their seniority rights in securing such position as may have been vacant, be reimbursed for loss sustained through the action of the carrier in failing to bulletin said positions.

In support of their contentions that the position of "Chief Dispatcher" at Klamath Falls, Oregon, should have been or be bulletined by the carrier because of the inclusion of certain duties usually performed by "Trick Dispatchers," the employes have cited Rule 1, or the "Scope" rule, together with other rules of the agreement between the employes and the carrier as determining the issues in this claim.

In the opinion of the Board there is little doubt but that, in its proper interpretation, Rule 1 of the agreement was intended to apply to offices where the services of two or more of the classes of employes designated in the rule were utilized; and that the exemption of one Chief Dispatcher in each office from the provisions of the schedule was intended to cover the services of one, out of two or more employes working under the classifications indicated during the same assigned hours, to serve in an executive or supervisory capacity.

Nothing, however, is indicated in Rule 1, or in any other rule of the agreement which might tend to prohibit the Chief Dispatcher from performing any of the duties usually performed by other classes of employes designated in the rule, provided that no other employe be displaced by such action.

In the instant case, evidence has been introduced showing a gradual progress both in the work and activities of the office indicated and in the number of its employes. From the establishment of the office, however, up to the present, one employe, while designated as Chief Dispatcher, has performed and continued to perform, during his assigned hours, such additional duties as might otherwise be required of a trick dispatcher, and at the same time has evidently maintained a general supervision over the activities of other employes.

Nothing, however, has been introduced in the evidence to indicate that the performance of such duties by the Chief Dispatcher as would ordinarily be required has displaced any other employe or that the work of the office during the assigned hours of the Chief Dispatcher has been or is of such volume as to require additional help. Under the circumstances the only question left before this Board is whether the provisions of the agreement have been violated by the failure or refusal of the carrier to bulletin the position of Chief Dispatcher in the office indicated.

Under the provisions and strict interpretation of Rule 1 of the agreement, the Board has no other recourse than to rule that there is no violation of the agreement by the carrier. At the same time your referee expresses his individual opinion that the exceptions to Rule 1 of the agreement should be applied only to offices requiring a more general supervision than offices of one employe, or than is possible with a divided duty, and not to offices where the

chief dispatcher is the only employe, or the only regular dispatcher on an assigned trick, and recommends that negotiations be entered into between the employes and the carrier with a view of exempting dispatching offices operating under the conditions outlined from the exceptions of the scope rule of the agreement.

**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 employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 1, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the agreement by the Carrier and no wage loss sustained by the employes.

#### **AWARD**

Claim denied with recommendations for negotiations between carrier and employes as outlined in individual statement in the concluding paragraph of the Opinion of the Board.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Attest: **H. A. JOHNSON**  
*Secretary*

Dated at Chicago, Illinois, this 26th day of August, 1937.