

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John W. Yeager, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: (a) Claim of the train dispatchers that the action of the management of the Chicago, Rock Island & Pacific Railway Company, in abolishing the position of Night Chief Dispatcher in its El Reno, Okla., office September 17, 1939, (to which position Train Dispatchers' Agreement applied) and creating position titled "280" Clerk (a position not covered by Dispatchers' Agreement) at greatly reduced rates of pay and transferring work performed by Night Chief Dispatcher to the Clerk and to Trick Dispatchers, is in violation of the Train Dispatchers' Agreement in effect on this property.

(b) Claim of the Train Dispatchers that the position of Night Chief Dispatcher in the El Reno, Okla., office be restored, together with the work attached to the position prior to its abolishment, and that train dispatchers who, by this action of the Management, have sustained and continue to sustain monetary losses be compensated therefor.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement, Governing Hours of Service and Working Conditions, effective May 1, 1938, between the Chicago, Rock Island & Pacific Railway Company, The Chicago, Rock Island & Gulf Railway Company (Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees) and American Train Dispatchers Association. Article 1—Scope, Sections (a) and (b) read as follows:

"(a) The term 'Train Dispatcher' as herein used shall include all Train Dispatchers, excepting only one Chief Train Dispatcher in each dispatching office.

Note. Qualified Train Dispatchers on the seniority roster will be used to effect relief of Chief Train Dispatchers for their weekly rest days, relief service and vacations.

(b) **DEFINITION OF CHIEF, NIGHT CHIEF, ASSISTANT CHIEF
DISPATCHERS' POSITIONS.**

These classes shall include positions in which the duties of incumbents are 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 supervisory duties assigned to the position of night chief dispatcher when that position was created on April 1, 1936, had disappeared or what little remained were abandoned when that position was discontinued September 17, 1939, and the routine clerical work performed by the night chief dispatcher was assigned to the position of night report clerk, which was re-instated. Therefore, the conditions with reference to the performance of work in the train dispatcher's office at El Reno in effect April 1, 1933 and immediately prior thereto were restored and neither the trick dispatchers nor the night report clerk are performing other than the duties they may be required to perform under their respective agreements and which are the duties these positions performed before the position of night chief dispatcher was created effective April 1, 1936. The conditions at El Reno with respect to the performance of work in the Dispatcher's office are not now any different than they were before April 1, 1936, and are not any different from the method and force used in the performance of the work in other train dispatcher offices where a position of night chief dispatcher is not in existence.

The clerical work now being performed by the night report clerk at El Reno, together with the approximate amount of time devoted to certain items of clerical work, follows:

Reading and writing messages, taking reports and messages to and from the telegraph office.....	1 hr. 35 min.
Compiling and typing 280, 57 and 35 reports.....	3 hr. 40 min.
Figure tonnage percentage.....	20 min.
Compiling 36 report.....	20 min.
Compiling stock report to Kansas City.....	10 min.
Compiling D-F-30 report.....	25 min.
Hot-box report.....	20 min.
File Copies of reports.....	10 min.
Compile engine failure reports, personal injury reports, accident reports, extra train mile report when occasion demands, other miscellaneous clerical work which may develop and idle time.....	1 hr.
Total	8 hours

When the position of night chief dispatcher was in existence from April 1, 1936 to September 17, 1939 the night chief dispatcher compiled the 280, 57, 35, 36, D-F-30, engine failure and hot-box reports, and also devoted approximately one hour and thirty minutes of his 8 hour assignment at the passenger station supervising the movement of trains 17-15, 18-52 (not related to dispatchers' work) in and out of the depot. The remainder of his time was devoted to supervision of train dispatchers and train operation on the division and duties incident thereto as occasion demanded. As heretofore stated, the conditions which demanded the supervision for which the position of night chief dispatcher was created April 1, 1936, disappeared, and that supervision was, therefore, abandoned and the routine clerical work which had been assigned to the night chief dispatcher from the discontinued position of night report ("280") clerk was returned to its source through reinstatement of the position of night report clerk.

The Carrier submits that the evidence establishes the fact that there was no violation of the agreement with the train dispatchers in effect on this property, and that the instant claim in its entirety should be denied by your Board.

OPINION OF BOARD: The controversy here is a claim by the American Train Dispatchers Association that the Chicago, Rock Island and Pacific Railway Company, in violation of the controlling Dispatchers' Agreement, abolished the position of Night Chief Dispatcher at its El Reno, Oklahoma

office on September 17, 1939 and created the position of "280" clerk, a position not covered by the Dispatchers' Agreement and one carrying a lower rate of pay than that of Night Chief Dispatcher, to which position was transferred work performed in the abolished position.

The claimant seeks to have the position of Night Chief Dispatcher restored and to have dispatchers who have sustained loss by action of the carrier in this regard compensated for such loss.

The record shows conclusively that the position was abolished and that a "280" clerk was employed who took over certain clerical work which had been performed in positions covered by the Dispatchers' Agreement.

In the view that we take after a careful examination and analysis of all matters presented we think we are not called upon to make any determination of the jurisdictional dispute seemingly projected by reason of a transfer of certain work from positions covered by the Dispatchers' Agreement to the "280" clerk. We think this claim may be decided by reference to the definitions of Train Dispatchers and the definition of their duties as found in Article 1, of the Agreement, this being the scope rule, and applying this rule to the facts as they have been disclosed.

Article 1 (a, b & c), are as follows:

"(a) The term 'Train Dispatchers' as herein used shall include all Train Dispatchers, excepting only one Chief Train Dispatcher in each dispatching office."

"(b) Definition of Chief, Night Chief and Assistant Chief Dispatchers' Positions."

"These classes shall include positions in which the duties of incumbents are 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."

"(c) Definition of Trick Train Dispatchers' positions."

"This class shall include positions in which the duties of incumbents are 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."

A comparison of Article 1(b) and (c) discloses that the duties of chief, night chief and assistant chief dispatchers are not the same as those of trick dispatchers. In other words, the former are empowered to perform duties in addition to those entrusted to the latter in the following particulars: They are responsible for the movement of trains on a division or other assigned territory, whereas the trick dispatchers are responsible for movement of trains by train order, or otherwise. While the two overlap, yet the function of the Night Chief Dispatcher exceeds materially that of the Trick Dispatcher. The former has the duty to supervise the handling of trains and the distribution of power and equipment incident thereto. None of these duties attach to the latter.

Under the authority of the decisions of this and other divisions, and in keeping with what seems to be generally accepted as a proper carrier prerogative, if there was no further need for the performance of the proper functions of a Night Chief Dispatcher at El Reno, Oklahoma, it would have been perfectly proper for the carrier to have abolished the position, but that condition is not shown by the evidence to exist here. On the contrary the evidence discloses preponderantly that the duties assigned by the Agreement to Night Chief Dispatchers was regularly performed by Trick Dispatchers. Certain

exhibits show this generally for the period covered by the file and one exhibit covering a consecutive period of 16 days shows that on at least 15 of those days specific duties of Night Chief Train Dispatchers were required of Trick Dispatcher.

On the basis of this showing it cannot well be said that the rules were not violated as claimed. The claim, accordingly, should be sustained.

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; and

That the carrier has violated for the period covered by the claim the existing agreement as claimed.

AWARD

The claim is sustained with restoration of the position and with adjustment of compensation ordered for the position for the period that the Agreement has been violated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1942.