Award No. 2316
Docket No. TD-2354

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that the M-K-T Railroad violated the rules of the Dispatchers' Agreement—

(1) When on November 3, 1942, without conference or agreement (Article VIII), it unilaterally changed the title of Chief Dispatcher, Denison, Texas, with assigned hours 7:00 A. M. to 6:00 P. M., to Trainmaster with same assigned hours, and thereby removed the work, duties and authority of the train dispatcher class from the scope and operations of the agreement rules by assigning said duties to the newly titled position of Trainmaster, a position wholly excepted from the rules of said agreement.

(2) That the position shall now be properly titled Chief Dispatcher, and the work, duties and authority of dispatchers as outlined in Article (I) Scope, under definition of chief, night chief and assistant chief dispatchers shall now be restored to the dispatchers' class, and

(3) That train dispatchers entitled to relief work in that office shall now be paid for all time lost under the provisions of paragraphs A, B, C and the note in paragraph C, Article III, and Article IV of the agreement, account of being deprived of relief work on chief dispatcher position.

EMPLOYES' STATEMENT OF FACTS: This grievance has been progressed in the usual manner under the rules of the Agreement between the Missouri-Kansas-Texas Lines and the American Train Dispatchers Association, effective June 19, 1937. The decision of the highest officer designated for that purpose, denying the claim, is shown as Exhibit TD-1.

The carrier was notified by letter dated March 14, 1943 that the claim would be appealed to the National Railroad Adjustment Board.

Effective November 3, 1942, without conference or agreement, the carrier unilaterally changed the title of chief dispatcher in the Denison office, assigned hours 7:00 A. M. to 6:00 P. M., to that of trainmaster, assigned same hours. All of the work, duties and authority of the train dispatcher class, covered by the scope and other rules of the Dispatchers' Agreement, formerly assigned to the position of chief dispatcher, were assigned to the newly titled position of trainmaster, a position wholly excepted from the rules of the Dispatchers' Agreement.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties, bearing effective date of July 16, 1937.

and working conditions, nor the adjustment of disputes arising out of such agreements entered into as provided for in the Railway Labor Act, as amended—or in any way supersede, take the place of, or contravene any of the provisions of the Railway Labor Act, as amended."

And, the current agreement on this property, effective July 16, 1937, contains the following, first paragraph, Article 8—

"This agreement shall become effective July 16, 1937, superseding all previous agreements and interpretations thereof, and shall continue in effect until it is changed as provided herein or under the provisions of the Railway Labor Act as amended."

The Carrier submits that the current agreement on this property is to be interpreted on its own terms.

Attention is directed to Section 1, Fifth of the Railway Labor Act, amended, which reads—

". . . That **no occupational classification** made by order of the Interstate Commerce Commission shall be construed to **define the crafts** according to which railway employes may be organized by their voluntary action, nor shall the jurisdiction or powers of such employe organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

(Emphasis supplied.)

The definition referred to by the Petitioner is found in Interstate Commerce Commission Ex Parte 72 (Sub No. 1), and the purpose of the issue is shown in the caption of this docket as issued by the Interstate Commerce Commission. This caption is—

"REGULATION OF THE INTERSTATE COMMERCE COMMISSION, INVOLVING

(a) Classes of employes to be included within the meaning of the term 'subordinate official.'

(b) 'Work defined as that of an employe,' as the terms 'Subordinate Official' or 'Work defined as that of an employe' are used in the Transportation Act of 1920, in the Railway Labor Act of 1926, and as Amended in June, 1934."

The Carrier submits that it must be clear that the definition of occupation made by the Interstate Commerce Commission does not automatically become a part of, or influencing or controlling in a collective bargaining agreement, individually and separately negotiated.

In connection with the request that train dispatchers entitled to relief work be paid for all time lost under the provisions of Articles 3 and 4: The Carrier denies the legitimacy of such an indefinite blanket claim, and asks that the Petitioner be put on proof of the fact of such alleged loss and citation of the provisions of the agreement which require payment as claimed.

As to the claim specifically made for Mr. J. W. Athy at Parsons, Kansas: The Carrier denies that Mr. Athy was paid, during the period covered by this claim, less than required by his assignment and the work he performed; and asserts that no further payment to Mr. Athy is due.

OPINION OF BOARD: The Scope Rule of the Agreement effective July 16, 1937, so far as here material, is as follows:

"The term 'train dispatcher' as herein used shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office, who will not be required to perform trick dispatcher's duties.

"Note. **Definition of chief, night chief and assistant chief dispatcher 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 employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

The questions presented go to the extent of the above rule. The facts disclose that at Denison, Texas, the carrier maintains a train dispatcher's office. At the time the current agreement became effective and until November 3, 1942, there was one chief dispatcher in this office, together with certain trick dispatchers. On November 3, 1942, the carrier conferred upon the chief train dispatcher the title "trainmaster." The "carrier does not deny, it frankly asserts" that the newly designated position of "trainmaster" performs the duties customarily performed by the chief train dispatcher. In other words, the name of the position was changed, but not the duties, and it is conceded that the duties are essentially those of chief train dispatcher. The hours of the chief train dispatcher prior to the change in name were from 7:00 A. M. to 6:00 P. M. which are the identical hours of the newly designated position of "trainmaster." Effective December 21, 1942, the carrier established a new position of chief train dispatcher in the Denison office with assigned hours 7:00 P. M. to 7:00 A. M. This newly created position was not bulletined.

In justification of its action, it is the carrier's basic contention that the Scope Rule of the agreement excludes all chief train dispatchers in an office from the coverage of the agreement. In this contention we think the carrier is clearly in error. The Scope Rule seems perfectly clear to us. It includes all train dispatchers "excepting only one chief train dispatcher in each dispatching office." This language, in our opinion, is subject to only one interpretation. The rule does not except one chief train dispatcher on each trick in an office, or on the same "tour of duty." It clearly excepts **only one** chief train dispatcher in **each dispatching office.** We cannot concur in Award 481, to the extent that anything said therein would indicate a construction of the Rule with which we are here concerned different from the construction we have placed thereon. While Ex Parte 72, made by the Interstate Commerce Commission, is not controlling in this dispute, we nevertheless believe that it has real probative value in showing the intention of the parties when they wrote the Scope Rule into their present agreement. That both parties were advised of this Ex Parte 72 is apparent from the record. Under Ex Parte 72 the class "Train Dispatchers" includes all the enumerated train dispatchers excepting only one chief dispatcher on any division. So this Scope Rule, apparently patterned upon the classification made by Ex Parte 72, includes all train dispatchers excepting only one chief train dispatcher in each dispatching office.

With regard to subdivision (1) of the claim, we are of the opinion that the position of chief train dispatcher in existence prior to creation of the second position of chief train dispatcher was exempt from the provisions of the agreement under the exception contained in the Scope Rule relating to one chief train dispatcher in each office. There was, therefore, no removal of work from the scope and operation of the agreement.

Subdivision (2) of the claim asks that the position "shall now be properly titled Chief Dispatcher." This request should be sustained. We think it clear that, while this position is excepted from the agreement, nevertheless the petitioners are entitled to have the position properly designated. Any

other holding would lead only to confusion, and might eventually result in rendering meaningless that provision excepting from the agreement only one chief dispatcher in each office. Certainly the Carrier should not be able to defeat the specific exemption of only one chief dispatcher by the simple device of conferring some other title or name on the position. We find nothing in the agreement requiring that the carrier designate chief dispatchers either as chief dispatcher, night chief or assistant chief. We think it clear, however, as stated above, that when the carrier created the second position of chief dispatcher on December 21, 1942, this position was included within the scope of the agreement under the provisions of the Scope Rule whether designated as chief, night chief or assistant chief. This position should be bulletined for dispatchers' bids under the provisions of paragraphs (c) and (h), Article V of the Agreement, and the senior qualified dispatcher should be assigned to the position and be paid the rate of this position from the time that it should have been bulletined and filled when the position was first established.

Subdivision (3) of the claim relates to relief work. Article III of the Agreement contains the following: "Each dispatching position, including that of chief train dispatcher, shall constitute a relief requirement." This provision seems to be a modification of the exception contained in the Scope Rule, and was apparently intended to place under the coverage of Article III, the chief train dispatcher, who had been excluded generally from the coverage of the Agreement by the Scope Rule. Unless such was the intention, the insertion of this provision in Article III was an idle gesture, as the chief train dispatchers covered by the agreement along with all other dispatchers would be covered by Article III, without this additional provision. It appears from the record that the parties have considered this provision in Article III as requiring relief service for all chief dispatchers. It follows that train dispatchers entitled to relief work should be compensated for all time lost by the acts of the carrier in failing to provide relief service, when such service was available, for the positions of chief dispatchers, which would include the so-called position of "trainmaster," as this position is in reality that of chief train dispatcher.

This docket has been considered together with Dockets TD-2355, TD-2356, TD-2357, TD-2358, TD-2359, TD-2360, TD-2361 and TD-2362, all of which involve indentical issues with the exception of names, dates and locations, and the foregoing Opinion is decisive in all these dockets.

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 employes involved in this dispute are respectively carrier and employes 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 violated the Agreement as indicated in the foregoing Opinion.

AWARD

Claims sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1943.