

Award No. 2321

Docket No. TD-2359

**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 December 21, 1942, it established a position of chief dispatcher, Denison, Texas, assigned hours 7:00 P. M. to 7:00 A. M., in violation of Article I—Scope, of said Agreement.

(2) That the position shall now be properly titled assistant chief dispatcher in accordance with the provisions of Article 1—Scope, and bulletined for dispatchers' bids under the provisions of paragraphs (c) and (h), Article V of said Agreement.

(3) That the senior qualified dispatcher entitled to the position shall now be assigned and compensated at assistant chief dispatcher's rate for all time lost until the position is properly bulletined and filled, and

(4) 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 the position.

EMPLOYES' STATEMENT OF FACTS: On November 3, 1942, the carrier, without conference or agreement, as provided for in Article VIII, unilaterally and nominally abolished the position of chief dispatcher in the Denison, Texas, office, assigned hours 7:00 A. M. to 6:00 P. M., turning the work, duties and authority of the dispatcher class over to a new position titled "trainmaster." Effective December 21, 1942, the carrier established a new position of chief dispatcher in that office with assigned hours 7:00 P. M. to 7:00 A. M. The position was not bulletined in accordance with the rules of the Dispatchers' Agreement.

This grievance and claim 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 July 16, 1937. The decision of the highest officer designated for that purpose, denying the claim is shown as Exhibit TD-1.

Article I—Scope, Article III, Paragraphs (a), (b) and (c), Article IV, Paragraph (g), and Article V, Paragraphs (c) and (h) are involved in the claim.

"REGULATIONS 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 occupations 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 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: This dispute is governed by the opinion filed in Docket TD-2354, Award 2316.

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 Opinion filed in Docket TD-2354, Award 2316.

AWARD

Claims sustained as indicated in the Opinion filed in Docket TD-2354, Award 2316.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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