

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that the action of the Management of the Southern Pacific Company (Pacific Lines) in refusing to grant an annual vacation allowance of two weeks (12 working days) to Train Dispatcher S. A. McGrath of the Los Angeles, California office in 1942, to which he was entitled by reason of his services as train dispatcher during the year 1941, is in violation of the letter, spirit and intent of the Train Dispatchers' Agreement in effect on this property.

(2) That Train Dispatcher S. A. McGrath be granted a vacation allowance of two weeks (12 working days) or money payment in lieu thereof, earned by his services as train dispatcher during the year 1941 but not granted in 1942.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Southern Pacific Company (Pacific Lines) and its train dispatchers, represented by the American Train Dispatchers Association, Governing the Hours of Service and Working Conditions of Train Dispatchers, Effective October 1, 1937, and Section (e) Article 3 of said agreement reads as follows:

"A train dispatcher who, on January 1st, has served in that capacity for one (1) year or more, will be allowed two (2) weeks, twelve (12) working days' vacation during the succeeding year, with pay at the rate of his assignment during time vacation is taken, or if unassigned, at trick train dispatcher's rate."

S. A. McGrath performed his first work as train dispatcher for this carrier on March 7th, 1940, in the Los Angeles, California office and has occupied the status of Train Dispatcher since that time and, therefore, had served in that capacity one year or more on January 1, 1942.

Train Dispatcher McGrath made request for his vacation allowance under date of December 16, 1942, which was denied by his Superintendent, Mr. H. R. Gernreich, under date of January 14, 1943, File 012-32, reading:

"Referring to your letter of December 16, regarding vacation allowance.

"Records show that you worked 203 days as train dispatcher and 118 days as wire chief in 1941. Therefore, you are not entitled to vacation with pay during the year 1942, either as telegrapher or train dispatcher, as you did not render compensated service on not less than 160 days as telegrapher during the calendar year 1941 to qualify you for a vacation in that capacity, neither did you serve in the capacity

Therefore, the question or issue in this docket is whether the claimant was entitled under Article 3 (e) to a vacation during the year 1942.

The carrier asserts that he was not.

Article 3 (e) clearly provides that a train dispatcher who has on **January 1, of any year, served in the capacity of a train dispatcher for one year or more**, prior thereto, will be allowed twelve (12) working days' vacation with pay.

The words ". . . served in that capacity . . ." as used in Article 3 (e) refer of course to status; therefore, properly stated Article 3 (e) provides that an individual who on January 1, of any year has the status of a train dispatcher and who prior to said January 1, continuously held the status of a train dispatcher for a period of **one (1) year or more** will be allowed twelve (12) working days' vacation with pay.

On January 1, 1942 the claimant had not held the status of a train dispatcher for a period of one (1) year. He did not acquire the status of a train dispatcher until July 14, 1941, the date that he established seniority in that capacity.

The mere fact that he served occasionally as a train dispatcher prior to July 14, 1941, (see paragraph 4, statement of facts) did not give him the status of a train dispatcher; prior thereto his status was that of a telegrapher under the Telegraphers' Agreement.

To further support the foregoing position the carrier invites the Division's attention to Award 1813. In this award this Division, with Referee Sidney St. F. Thaxter sitting, interpreted Article 3 (e) of the current agreement. The opinion states in part:

" . . . The rule has reference not to his service from day to day but to his status as a train dispatcher over a period of at least a year prior to January 1st . . ."

" . . . This rule means simply that a train dispatcher who has held that status with the company for a year or more prior to January 1st is entitled to his vacation with pay."

The claimant's status prior to July 14, 1941 was not that of a train dispatcher but was that of a telegrapher. Not having held the status of a train dispatcher for a period of a year prior to January 1, 1942, he did not qualify under Article 3 (e) of the current agreement for a vacation of twelve (12) working days during the year 1942.

CONCLUSION

The carrier asserts that it has conclusively established that the alleged claim in this docket is without merit and therefore respectfully submits that it is incumbent upon the Board to deny it.

OPINION OF BOARD: The question here is whether the claimant was entitled to a vacation with pay during the year 1942. There is involved the application of Article 3, Paragraph (e) of the current agreement. This reads as follows:

"(e) **VACATIONS**—A train dispatcher who, on January 1st, has served in that capacity for one (1) year or more, will be allowed two (2) weeks, twelve (12) working days' vacation during the succeeding year, with pay at the rate of his assignment during time vacation is taken, or if unassigned, at train dispatcher's rate."

This rule was construed in Award 1813 and both parties cite and rely on that award. It was there said:

"The rule has reference not to his service from day to day but to his status as a train dispatcher over a period of at least a year prior to January 1st.

"* * *

"This rule means simply that a train dispatcher who has held that status for a year or more prior to January 1st is entitled to his vacation with pay."

The question in the instant case is: Did the claimant hold the status of a train dispatcher on January 1, 1941, and continue in that status during the remainder of the year? If he did, he was entitled to his vacation with pay, otherwise not. The issue is one of fact.

The Carrier contends that the claimant did not become a train dispatcher until July 14, 1941, when, under the provisions of Article 5, he first secured seniority as such.

The employe, who had been a telegrapher, contends that he began work as a train dispatcher on March 7, 1940.

The time when he first acquired seniority may be conclusive as to his status subsequent thereto. It is, however, unnecessary to determine whether he could acquire the status of a train dispatcher prior to that time, for we are satisfied that he did not have that status on January 1, 1941, the date with which we are here concerned. He had been a telegrapher and was covered by the Telegraphers' Agreement. In the process of qualifying for the position of train dispatcher, he worked as such first on March 7, 1940, while continuing his status as a telegrapher. During the whole of 1940, including March 7th, he worked but three days as a train dispatcher. In the latter half of January, 1941, he worked six days, none in February, none in March, six in April and four in May. He does not seem to have commenced what might be called regular work until June. In view of these facts, which are not in dispute, we do not believe it is possible to hold that he held the status of a train dispatcher on January 1st. On that date he had performed but three days' work and that was performed in the course of qualifying for the new position.

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 21, 1934;

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

That the Carrier did not violate the agreement.

AWARD

Claim (1) denied. Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.