

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 B. A. Benson of the Oakland Pier, 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 B. A. Benson 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."

Train Dispatcher B. A. Benson began working as train dispatcher on May 14, 1940, 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.

Failure of the carrier to grant a vacation allowance to Train Dispatcher B. A. Benson during the year 1942 was handled by Division Chairman S. C. W. Hansen with Superintendent J. C. Goodfellow on the basis that Mr. Benson held the status of Train Dispatcher with the Southern Pacific Company for a year or more prior to January 1, 1942 and had performed 224 days of train dispatching service during the year 1941.

Superintendent Goodfellow declined to grant the vacation allowance, claiming:

"Train Dispatcher Benson not having served sufficient time in capacity of train dispatcher during the year 1941 to qualify for a

(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." (Emphasis ours.)

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 May 2, 1941, the date that he established seniority in that capacity.

The mere fact that he served occasionally as a train dispatcher prior to May 2, 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 May 2, 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 decision in this case is governed by that in TD-2489, Award No. 2502. The facts are substantially the same. In so far as they differ, it is only in degree.

In accordance with the previous ruling, the claims in this case must be denied.

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 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.