

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE DELAWARE AND HUDSON RAILROAD
CORPORATION**

STATEMENT OF CLAIM: (a) Claim of the American Train Dispatchers Association that the Carrier violated Article 1 (b) of the Agreement by failing to properly classify a position in the Albany, N. Y., office, held by H. J. Williams, when they continued the position at trick dispatcher's rate of pay, after the Agreement was signed on June 25, 1940, while the nature of the work was such that it should have been classified as Night Chief Dispatcher.

(b) That H. J. Williams be paid the difference of \$45.00 per month for each month from June 25, 1940, until July 3, 1942, the same being the difference between the rate of Night Chief Dispatcher and Trick Train Dispatcher.

(c) That the carrier illegally abolished the position in the Albany, N. Y., office, held by H. J. Williams on July 3, 1942 and turned the work over to telegraphers and trick dispatchers at a lower rate of pay.

(d) That the position be restored, properly classified as Night Chief Dispatcher; that H. J. Williams be restored to the position at rate of pay of Night Chief Dispatcher and that he be paid the difference in rate of pay between that of trick train dispatcher and Night Chief Dispatcher from July 3, 1942 until the position is restored.

(e) That all others adversely affected by the displacement of H. J. Williams be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: At the time the Agreement between the Carrier and the Train Dispatchers was signed on June 25, 1940, there was in existence a position in the Albany, N. Y. office, with assigned hours from 10:30 P. M. to 6:30 A. M., held by H. J. Williams, paying a trick dispatcher's rate of pay. The duties of this position and the authority vested in the incumbent, were such as to require that it be classified as Night Chief Dispatcher.

On June 27, 1942, Superintendent J. E. Fairhead notified H. J. Williams in writing that the position was abolished, effective July 3, 1942.

Simultaneously with the abolition of the position held by H. J. Williams, a third trick telegrapher's position was established and the work formerly performed by Williams was turned over to the second and third trick telegraphers and trick dispatchers.

POSITION OF EMPLOYEES: That it was the responsibility of the Carrier to properly reclassify this position in accordance with Article 1 (b) of the Train Dispatcher's Agreement and to apply the rate of pay of Night Chief Dispatcher.

The Carrier respectfully requests that the case be dismissed and the organization's claims be denied.

OPINION OF BOARD: The facts disclosed by the record in this docket bring the dispute within the principles applied in Award No. 1852 and Award No. 2526—the latter having been this day rendered. The dispute is between the same parties under the same provisions of the same agreement. And the same arguments are advanced by the parties in support of their respective positions as were advanced in the awards mentioned.

Those awards being controlling, it is unnecessary to reiterate here the theories on which they were decided. However, it may be well to briefly sketch the factual highlights of this dispute.

Prior to October 16, 1936, there existed in the Train Dispatcher's office at Albany a position of Night Chief Dispatcher. On that date the position was purportedly abolished. The duties, however, remained and, on the effective date of the agreement between the carrier and the organization, were being performed by the claimant under the appellation of "Night Clerk." His tour of duty was from 10:30 P. M. to 6:30 A. M. Under the evidence we are convinced that his duties comprised those commonly attendant upon the position of Night Chief Dispatcher. We are convinced that he was in fact a Night Chief Dispatcher in all but name and rate of pay.

Between June 15th and July 1st, 1942, the carrier established two Side-Wire positions. On July 3rd it abolished the **Night Clerk** position held by claimant. Exercising seniority rights, claimant took over a position of Trick Dispatcher. We are satisfied that the duties attendant upon the position of Night Chief Dispatcher have at all times existed and are now being performed by several different employees in the office.

Upon these facts we think the carrier is obligated under Article 1 (b) to reclassify positions so as to provide for a position of Night Chief Dispatcher. Reparation, however, will be allowed only from the date demand was made upon the carrier for reclassification.

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 is violating the agreement.

AWARD

Claim for reclassification sustained; reparation limited as indicated in opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1944.