

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Louisiana and Arkansas Railway Company violated and continues to violate the intent of Article I—scope; Article III (a), as amended by the mediation agreement effective May 1, 1942; Article III (c); Article VI (a); and Article VII (e) of the Dispatchers' Agreement effective July 1, 1926, when on or about May 8, 1946 it eliminated the weekly rest day (Monday of each week) of the position of the Assistant Chief Dispatcher in the Shreveport, Louisiana office from the regular relief dispatcher assignment, and placed in effect an arrangement whereby the chief train dispatcher, to whom the rules of the Agreement are not applied, is required to perform the duties of the assistant chief dispatcher for relief purposes one day (Sunday) of each week, thereby depriving the regular relief dispatcher of work which belongs in his assignment, and which service he performed prior to the time this violation arose, and

(b) The Louisiana and Arkansas Railway Company shall now restore the weekly rest day of the assistant chief dispatcher position to the regular relief dispatcher assignment, and pay those who have, or who may perform service as relief dispatcher the difference in what they have been paid and what they would have been paid had they performed the weekly rest day service on the assistant chief dispatcher position from the time this violation began until it is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 8, 1946, the rest day assigned to the assistant chief dispatcher position was Monday of each week. The regular assignment of the regular relief dispatcher was as follows:

First trick dispatcher on	Sunday
Assistant chief dispatcher on	Monday
Other service on	Tuesday
Second trick dispatcher on	Wednesday
Rest day for his own position on	Thursday
Third trick dispatcher on	Friday
Other service on	Saturday

On May 8, 1946, Chief Dispatcher, Mr. F. C. Guelfo, on instructions from the Superintendent, Mr. R. Norwood directed that effective that date, the assistant chief dispatcher would not work on Sundays; and that the regular relief dispatcher would be assigned to other than train dispatching

Of course, this is entirely satisfactory to the Management, but I had in mind letting the matter go to the Board without the necessity of oral presentation.

Other correspondence passing between Mr. Tipler and the undersigned is covered by our Exhibits F and G.

Exhibits not reproduced.

OPINION OF BOARD: The purpose of the claim is to have restored the seven day assignment of the assistant chief dispatcher in the Shreveport office of the Carrier, thereby restoring four days of relief work therein and, under Art. III (c) of the parties' effective agreement, requiring the continuance of the position of a relief dispatcher.

The facts are that the Carrier changed the position of assistant chief dispatcher in the Shreveport office from a seven to a six day per week assignment and had the chief train dispatcher, here admitted to be excepted from the agreement, perform all the duties on Sunday, a day when such duties were greatly reduced. The effect of the change was to reduce the number of regular relief days in the Shreveport office from four to three. This could result in the doing away with the position of a relief dispatcher as provided for in Art. III (c) of the agreement.

The Association cites and relies upon many Awards of this Division to the effect that work once subjected to an agreement may not be removed therefrom by unilateral action of the Carrier and given or assigned to others excepted from or not covered by the agreement. See Awards 2044, 3101, 3191, 3425 and 3491. This general principle, under the situations as presented in each of those disputes, was properly applied.

However, under facts such as here, this principle has been properly qualified by such awards of this Division as 931, 1314, 1593, 1694 and 2334. Award 931 fully discusses the question and then states:

"* * * Nor can we agree with the proposition that the turning back to the chief dispatcher of the work taken from him, (he being of an excepted class not subject to the agreement), constitutes a transgression of those principles. As earlier stated there is no specific particular type of work that can be said to be peculiarly work of an assistant chief dispatcher. On the contrary, his work consists of, when his position is necessary at all, the handling of that excess of the chief dispatcher's work which the latter is unable to perform; thus when this excess disappears the work of assistant chief dispatcher disappears. Though some of the same class of work which he did perform may thereafter continue to be performed by the chief dispatcher, it must be remembered that chief dispatcher work is not subject to the agreement except only as an excess thereof may be assigned to a position of assistant chief dispatcher that may be established. Therefore, it is only an excess of such work which ever becomes subject to the dispatchers' agreement, and when the excess vanishes there is no such work covered by the dispatchers' agreement."

This same principle is more generally stated in Award 1314 as follows:

"* * * Where the duties incidental and normal to a position not under the craft flow out directly to an assistant included in the agreement and taken on where work increased to a point where such assistance was necessary, it would seem that by the same token they could ebb directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were indigenous to that position—normal and incident to it. * * *"

We think these principles applicable here and that the Carrier acted within its authority and did not violate the agreement.

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 did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1947.