

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: 1. That the Pennsylvania-Reading Seashore Lines violated Part I of the Agreement entered into between that Carrier and Train Dispatchers, Movement Directors and Power Directors, employees of said Carrier, represented by the American Train Dispatchers Association, effective May 1, 1946, when, effective February 1, 1949, it abolished the train dispatching position held by Train Dispatcher V. C. McDougall and reduced the relief assignment held by C. R. Stricker from six (6) to five (5) days per week and transferred part of the work belonging to train dispatchers to employees of another craft or class not within the scope of Part I of said Agreement.

2. That the Pennsylvania-Reading Seashore Lines shall compensate the senior extra train dispatcher who is available for, but who is not performing train dispatcher service, and relief Train Dispatcher C. R. Stricker each in the amount he would have earned as train dispatcher, less the amount he did earn in other service for each day commencing with February 1, 1949, on which he would have performed service as train dispatcher had not said train dispatching position been abolished and said work transferred therefrom until said position is restored and the work which was removed thereto. That part of this claim which is in behalf of the senior extra train dispatcher shall, instead, be in behalf of V. C. McDougall on and after the date on which he returns from leave of absence and is available and ready for duty.

EMPLOYEES' STATEMENT OF FACTS: An Agreement by and between Pennsylvania-Reading Seashore Lines and Train Dispatchers, Movement Directors, and Power Directors, employees of Pennsylvania-Reading Seashore Lines represented by American Train Dispatchers Association, became effective May 1, 1946. Part I of that Agreement contains provisions governing Train Dispatchers, employees of Pennsylvania-Reading Seashore Lines and will hereafter be referred to simply as the Agreement. Copy of said Agreement is on file with this Board and is hereby made a part of this submission as though fully incorporated herein.

The Scope and pertinent rules of that Agreement are quoted below for ready reference by the members of your Honorable Board.

"Scope—The provisions set forth in Part I of this Agreement shall constitute Agreement between the Pennsylvania-Reading Seashore Lines and its Train Dispatchers, represented by the American Train Dispatchers Association, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein."

CONCLUSION

The Carrier has shown that the abolishment of the position was proper, and that a train dispatcher occupying a position of four, but less than six days is not entitled to a guarantee of six day's work per week.

Therefore, the Carrier respectfully submits that, under the Agreement, the Claimants are not entitled to the compensation they claim and respectfully request your Honorable Board to dismiss the claim of the employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: In its so-called "KN" office at Camden prior to Feb. 1, 1949 Carrier maintained a regular dispatching force of six regular dispatchers, who were relieved by an assigned relief dispatcher. Effective Feb. 1, the Carrier abolished one of the third trick train dispatcher positions transferring part of the work of the position to the other third trick dispatcher and assigning certain clerical work thereof to clerical forces in the Movement Office.

There are two issues involved in this claim: (1) Whether or not the transfer of the clerical work involved was a violation of the Scope Rule of the Dispatchers' Agreement; (2) whether or not the Carrier violated Regulation 5-B-1 of the Agreement between the parties covering relief assignments of four but less than six days.

With respect to issue (1) above, it appears that the clerical work involved compilation of data with respect to passenger train performance and passengers handled and other reports of similar nature. The reports are made up from data on dispatchers' worksheets. It appears that this type of work was performed during the summer season when the traffic load was extremely heavy by a clerk on the third trick. There is conflict as to whether or not this work was performed by the clerk on his own or working in conjunction with the Dispatcher. In any event, there is no doubt that the work was performed to a considerable extent by clerks in the summer months. Further, it is apparent that it is not clerical work which is performed by the dispatcher immediately following upon some action or disposition he has made with respect to train movements. Thus, it is clear that the work involved is at least one step removed from the record keeping required of a dispatcher in connection with his primary duties of being responsible for the movement of trains and supervision of forces handling train orders. For these reasons we do not believe that it is so intimately entwined with the discharge of a dispatcher's duties that it can be said that it cannot be detached herefrom and assigned to a clerk. Accordingly we hold that there was no violation of the Scope Rule of the Dispatchers' Agreement in assigning the work as Carrier did in the instant case.

With respect to the second issue above referred to, Regulation 5-A-1 (b) reads as follows:

"Relief assignments of four but less than six days work per week will be filled as provided in Regulation 2-B-1. The Relief Dispatcher filling such position will, on days not assigned as Relief Dispatcher, be used as Extra Train Dispatcher or in other service to the extent of his availability. Compensation for each day worked as Train Dispatcher will be allowed in accordance with Regulation 4-B-1 (c). For days on which other than train dispatching service is performed, compensation will be based on the established rate for such service." (Emphasis supplied)

Carrier asserts that this rule is not a guarantee rule and therefore it is not obligated to provide the Relief Train Dispatcher with work in excess of five days nor to pay him for time not worked if he is not called for service on the sixth day. We cannot agree with this contention. Although the language of the rule is not wholly clear—the use of the word shall instead of the underscored will or of may, conceivably could eliminate any uncertainty as to its

meaning—we believe when read in conjunction with other provisions of the Agreement it is clear the parties intended that assigned Relief Dispatchers were to be guaranteed six days' work per week. It is noted that these Relief Assignments are to be filled as provided in Regulation 2-B-1 which covers filling of regularly assigned positions. This indicates an intent to treat Relief positions as regularly assigned and does no violence to the generally accepted practice and custom that Relief Assignments are considered as regular assignments. Dispatchers performing relief work under Sec. 5-B-1 (a) should therefore be treated no differently than regularly assigned trick dispatchers, except as otherwise specifically provided in the Agreement. It is undeniable that regularly assigned positions of Train Dispatchers are guaranteed six days per week. It follows that the same is guaranteed to the assigned Relief Dispatcher. We believe that our conclusion in this respect is fortified by the holding in one of the earliest Awards of this Board, No. 43, in which a similar claim was sustained by the Board without a referee.

It follows from the above that the claim should be sustained but only to the extent that the Relief Dispatcher be compensated for the sixth day in each week from February 1, 1949 when he was available to perform service on such day and held out of service.

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 Carrier violated the Agreement to extent indicated in Opinion.

AWARD

Claim denied in part and sustained in part as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. J. Tummon
Acting Secretary

Dated at Chicago, Illinois this 27th day of January, 1950.