

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of C. W. Plummer, train dispatcher, International-Great Northern Railroad Company, that:

(1) The Carrier failed to comply with the rules of the Train Dispatchers' Agreement when on April 3rd and 4th, 1949, it failed to use extra dispatcher C. W. Plummer, to work the third trick dispatcher position at Palestine, Texas.

(2) Dispatcher C. W. Plummer shall now be paid the difference between what he was paid as telegrapher and what he would have received if he had been used to perform dispatcher service to which he was entitled on April 3rd and 4th, 1949.

EMPLOYEES' STATEMENT OF FACTS: An Agreement, effective May 1, 1948, between the International-Great Northern Railroad Company and its train dispatchers represented by American Train Dispatchers Association, copy of which is on file with this Board is, by this reference, made a part of this submission as though fully incorporated herein. The scope rule of said Agreement, pertinent to the instant dispute, reads as follows:

"(a) Scope.

This Agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include Night Chief, Assistant Chief, trick, relief and extra train dispatchers. It is agreed that one Chief Dispatcher (now titled Division Trainmaster on this property) in each dispatching office shall be excepted from the scope and provisions of this Agreement."

Article IV (g) of May 1, 1948 Agreement reads as follows:

"(g) Extra Work.

Extra dispatchers will be used in any office in line with their seniority when extra work is required and may bid in regular position in any office on the system. They may be used in other than dispatching service, but must be available and protect extra dispatching in any office."

At about 1:00 P.M., April 2, 1949, Mr. G. P. Sowell, a regularly assigned train dispatcher in the Palestine, Texas office, whose hours of duty were from

the case under consideration the Carrier has shown that it was not possible to relieve claimant to perform the two days extra work.

Award 4150 involves eleven dates on which it was found that an extra dispatcher junior to claimant was used to fill temporary vacancy on a position of train dispatcher. While it was the position of the Carrier in that case that there was no qualified extra telegrapher available to relieve claimant on his regular position of telegrapher, your Board found otherwise. The following excerpt is quoted from "Opinion of Board" in that case:

"Here there is no doubt that there were extra telegraphers available."

In the case under consideration the Carrier has conclusively shown that there was no extra telegrapher available to relieve Mr. Plummer on his regular telegrapher position in the Relay District in "Q" Office.

Award 4263 involves claim of an extra dispatcher account not used on twenty dates to relieve regularly assigned dispatchers on their rest days. The claim now before your Board is based upon the contention that Mr. Plummer should have been used to fill Dispatcher Sewell's position on two dates he was off account sickness. The following is quoted from "Opinion of Board" in Award 4263:

"Two separate and distinct, though related, facts must affirmatively be made to appear before the Carrier is authorized to work its regularly assigned dispatchers on their rest days, to the exclusion of its senior extra dispatcher, viz: The confronting situation must have been in the nature of an emergency, and it must also have been unavoidable. We cannot bring ourselves to hold that a situation that continued regularly from May 9th to July 30th, during which Claimant was relieved on his regular telegrapher's position on six days, exclusive of Sundays, confronted the Carrier with such an unavoidable emergency as is contemplated by the rules."

Aside from the fact that an entirely different situation was involved in Award 4263 than in the case under consideration, we believe the above quotation from "Opinion of Board" in that case is sufficient to show its lack of comparability with the instant case.

When consideration is given to the circumstances in this case, which obviously precluded the use of claimant as extra train dispatcher on the two dates in question, it is clearly evident that there is no jurisdiction, merit or basis for the claim here presented, and it should, therefore, be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant Plummer was an extra dispatcher, holding regular assignment as first trick operator in "Q" Office at Palestine, 8:00 A.M. to 4:00 P.M. and was off duty on his assigned rest day and was available to be called to work on the assignment in question. On April 2, 1949, Trick Train Dispatcher Sowell reported unable to work account of sickness on his trick, April 3, at Palestine, Texas. The Carrier, instead of calling Extra Dispatcher Plummer, used R. P. Bailey, a regularly assigned relief dispatcher.

The Employees contend that the Carrier violated Rule 4 (g). The Carrier states that the claimant was not available for the extra service in question because of an alleged shortage of operators to relieve Plummer from his regular telegrapher's duties.

Rule 4 (g) reads:

"Extra dispatchers will be used in any office in line with their seniority when extra work is required and may bid in regular position

in any office on the system. They may be used in other than dispatching service, but must be available and protect extra dispatching in any office."

Under this rule the claimant was entitled to the work. The contention of the Carrier that the claimant was not available for the extra work because of the shortage of operators to relieve the claimant has no merit. Award 2942.

The reason the Carrier advanced in the exchange of correspondence that "it was not practical to use Telegrapher Plummer as extra dispatcher" has no merit.

Plummer had to protect his seniority by being available for extra work as a dispatcher, he was available and when the Carrier gave this work to another, it violated the contract.

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

The Carrier violated the contract.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.