

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railroad Company acted contrary to the intent of Article 3-(d) of the currently effective agreement governing rates of pay, hours of service and working conditions when, effective on or about July 24, 1949, the carrier combined (doubled) dispatching territories for "relief purposes", i.e., when on Sundays it required one train dispatcher, in addition to the dispatching territory to which he was regularly assigned on other days of the week, to also dispatch trains on territory to which another train dispatcher was regularly assigned to dispatch trains on other days of the week, so as to permit the latter to be off duty on one of his regularly assigned weekly rest days in accordance with the requirements of Article 3-(a) of the said Agreement, and

(b) The Missouri Pacific Railroad Company shall now compensate Train Dispatcher W. J. Power and Extra Train Dispatcher E. L. Hymal for all monetary loss sustained by each of them beginning on or about July 24, 1949, and for each day on which they were and are contractually entitled to and on which they could and would have performed train dispatcher service if the carrier had complied with the intent of the Agreement rules, and until the carrier complies therewith.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing working conditions, between the parties to this dispute was in effect at the time this dispute arose. A copy thereof is on file with this Board and is, by this reference made a part of this submission as though fully incorporated herein. The Scope 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 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."

could be no blanking of positions but a dispatcher position once established would have to be worked seven days a week. That rule being withdrawn, there is not now, nor has there ever been, any rule in the Dispatchers' Agreement with the Missouri Pacific Railroad which imposes on the Carrier the obligation to work each and every dispatcher position, once established, seven days of the week. Also, particular note should be made of the fact that the proposed Doubling of Territory Rule was denied to the Employees by the Emergency Board in its recommendations and it was denied to them when the agreement was made August 1, 1945, and the Employees agreed with this denial when they signed the agreement on August 1, 1945. The clear intent of the Chief Personnel Officer in granting to the Employees Article 3(d) as written in the agreement of August 1, 1945 was that whenever there was not sufficient work to require addition of a complete set of dispatchers in an office the Carrier has the right to work one or two extra dispatchers part of the days of the week when traffic conditions require assistance for the regular set of dispatchers, but there is no obligation in that rule requiring the Carrier to furnish such assistance seven days of the week.

Mr. H. E. Roll, former Chief Personnel Officer, was called into conference with the Employees in the discussion of the claims of Dispatchers Power and Hymel on December 19, 1949, at which time Mr. Roll referred to memoranda and notes made by him at the time Article 3 (d) was written into the agreement and reviewed same with Vice President Tipler, who was a party to the negotiation of the agreement of August 1, 1945. Mr. Roll expressed the opinion in that conference that there was no violation of Article 3 (d) in what was done at Jefferson City beginning July 24, 1949.

It is further the position of the Carrier that it has exhausted all reasonable efforts to convince the Employees of the folly of their attempted interpretation of this Article and that all of the things that are herein presented by the Carrier have been gone over very thoroughly with the Employees in conference and through correspondence.

The claim should be denied because there is no violation of Article 3 (d) as written in the agreement and no violation of the intent of this rule; further, there is no hardship being imposed on any dispatcher by reason of not furnishing additional help in the dispatching of trains on the territory between Jefferson City and Kansas City on Sundays.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is founded on an alleged violation by the Carrier of provisions of the Agreement between the parties prohibiting the doubling of Train Dispatching territory for relief purposes.

The basic facts upon which the controversy must be determined will be detailed as briefly as the state of the record permits.

The Carrier's direct line, primarily a passenger route, between Jefferson City, Mo., and Kansas City, Mo., is known as the Sedalia subdivision. Another line, used principally for freight service, breaks off of the Sedalia subdivision line at SR Junction, approximately two miles west of Jefferson City and follows the Missouri River into Kansas City. It is known as the River Subdivision. Effective September 16, 1942, the Carrier established a train dispatching office at Jefferson City and thereafter, for a period of seven years, up to July 17, 1949, maintained and employed two separate and distinct sets of Train Dispatchers at that point. One set with a Train Dispatcher on each of three tricks, i.e., one working the first trick, 8:00 A.M. to 4:00 P.M., one working the second trick 4:00 P.M. to midnight, and one working the third trick midnight to 8:00 A.M., was assigned to the dispatching of trains on the territory comprising the Sedalia Subdivision. The second set, also consisting of a Train Dispatcher on each of the three tricks, with the same hours as the dispatchers assigned to the first, was assigned to the dispatching of trains on the territory comprising the River Subdivision. Each Dispatcher filling tricks within the

set held a regularly assigned seven day position with one day off as a rest day and a Relief Train Dispatcher was regularly assigned to fill each such position on its assigned rest day.

On July 17, 1949, the Carrier abolished the Second Trick Dispatcher position on the River Subdivision entirely and thereafter the Second Trick Dispatcher at the Sedalia Subdivision was required to handle the dispatching on both Subdivisions on the second trick. The propriety of that action is not questioned or involved in this proceeding. On the same date the Carrier gave notice that effective Sunday, July 24, 1949, the first and third trick positions of the River Subdivision Dispatchers would be changed from seven to six day assignments, that thereafter both such Dispatchers would have Sunday as a rest day, and that on such days the dispatching work on the River Subdivision territory would be combined with and performed by the occupants of the first and third trick Sedalia Subdivision positions. This is the action challenged by the Employees as being in violation of the Agreement.

At the time the Carrier established the two sets of Train Dispatchers at Jefferson City on September 16, 1942, the existing Agreement between the parties contained no provision relating to the doubling of Train Dispatcher territory for relief purposes. Thereafter, with those positions in existence and covering separate territories they negotiated an Agreement, effective August 1, 1945, now current, in which was included a provision, Article 3(d), clearly intended to prohibit action of that character. Such provision reads:

"The doubling of territory for relief purposes will not be permitted, except as follows:

"Where in any office a continuous shift of train dispatchers has, during time of peak traffic, been augmented with either one or two additional train dispatchers, the latter may be given a regularly assigned rest day per week without filling such position on such day if it is found possible to designate as a regularly assigned rest day a day when the volume of business is not sufficiently heavy to require filling such position on that day."

The Carrier at the outset insists the relief here sought should be pursued under the National Agreement of May 27, 1937, and in particular Article 4 thereof which reads:

"Any Train Dispatcher shall have the right to bring to the attention of the management, directly or through his designated and authorized representative, any conditions or practices involving safety in train dispatchers service, or involving working conditions of train dispatchers not covered by existing agreements or agreements that may hereafter be negotiated between railroads and train dispatchers."

The short and simple answer to this contention is that Article 3 (d) of the current Agreement, negotiated and entered into between the parties, covers the question here involved and therefore by its express terms the National Agreement to which the Carrier refers has no application.

Confronted by facts as heretofore related we believe the sole and only question for decision in the instant dispute is whether the Carrier violated the Provisions of Article 3 (d), heretofore quoted, of the current Agreement when, on and after July 24, 1949, it failed to assign a Train Dispatcher to afford relief to the regularly assigned first and third trick Train Dispatchers on its River Subdivision on Sunday the regular rest day of those positions and instead required the regularly assigned first and third trick Dispatchers on its Sedalia Subdivision to perform the work of those positions.

The undisputed facts, as we glean them from the record, clearly establish that even after the abolishment of the second trick River Subdivision position there were and now are two regularly assigned Train Dispatcher positions, namely, the first and third trick positions, the work of which, regardless of

whether they be regarded as six or seven day week positions relates entirely to the River Subdivision territory. In other words, it is separate from and no part of the work of the Sedalia Subdivision territory. This, it should be emphasized, was the situation when the existing contract, fixing the rights of the parties as of its dates, was executed. Notwithstanding, in the face of a clear and unambiguous rule to which it had agreed as a result of collective bargaining to the effect the doubling of train dispatcher territory for relief purposes would not be permitted, except under circumstances not here involved, the Carrier assigned, and continues to assign, the work of the involved rest day positions of the River Subdivision, requiring the occupants of those positions on such rest days to handle the dispatching of trains on both the River and Sedalia Subdivision territories. That, in our opinion, when first required resulted, and thereafter continued to result, in a violation of the very thing prohibited by the clear and unequivocal provisions of Article 3 (d) of the contract, namely, the doubling of territory for relief purposes. This, we may add, holds true even though subsequent changing conditions, relied on by the Carrier but to which we have not referred because they do not change the result, make the existing rule harsh and improvident and seem to justify action other than its terms permit. Even so, and if such be the case, the remedy is by negotiation not by unilateral action in violation of express terms of 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1950.