

Award No. 5371

Docket No. TD-5370

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of Train Dispatcher F. A. Summerhays, that:

(1) The Grand Trunk Western Railway Company did not comply with the intent of the provisions of Paragraph 2, Article 3 (a) of the current Train Dispatchers' Agreement when the Carrier compensated Train Dispatcher F. A. Summerhays for service performed on May 20 and 21, 1950, and

(2) The Carrier shall now compensate Claimant Summerhays in an amount representing the difference between what he was paid on May 20 and 21, 1950, and what he should have been paid if the provisions of said Paragraph 2, of Article 3 (a) of the Agreement had been complied with.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing compensation, hours of service and working conditions, dated May 14, 1942 and revised effective September 1, 1949, between the parties to this dispute, and applicable to Claimant F. A. Summerhays, was in effect at the time this dispute arose. A copy of that agreement is on file with this Board and is, by this reference, made a part of this submission as though fully incorporated herein.

Article 3 (a)-(2) of the current agreement reads as follows:

"Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days."

F. A. Summerhays had, in accordance with the rules of the agreement, acquired the position of "Relief Train Dispatcher", and it was his duty as such to work the following weekly program:

Mondays	— 8:00 A. M. to 4:00 P. M.
Tuesdays	— 8:00 A. M. to 4:00 P. M.
Wednesdays	— 8:00 A. M. to 4:00 P. M.
Thursdays	— 4:00 P. M. to 12 midnight
Fridays	— 4:00 P. M. to 12 midnight
Saturdays	— Off Duty (his own rest day).
Sundays	— Off Duty (his own rest day).

work. The position of Chief Dispatcher on the Grand Trunk Western Railroad does not come within the scope of any working agreement with any Organization, and there is no reference to Chief Dispatcher service in the Train Dispatchers' Agreement.

POSITION OF CARRIER: In handling with the Carrier, the General Chairman of the Organization cited Paragraph 2 of Article 3 (a) of the Working Agreement as supporting claim for time and one-half. The mentioned paragraph reads as follows:

"(2) Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days."

The Carrier contends that paragraph 2, as well as the other rules, contained in the Agreement with the American Train Dispatchers are only applicable when a Train Dispatcher is working as a Train Dispatcher and not when he is employed in some other capacity. In this respect would refer your Honorable Board to Third Division Award 3674 which involves a principle similar to the one here involved. The Board, with the aid of Referee Joseph L. Miller, denied the claim and in their Opinion stated in part as follows:

"The Board concludes that there was no violation of the Rest Day Agreement as alleged. When Wright was working as a dispatcher he was working under the Dispatchers' Agreement, not the Telegraphers' as supplemented by the Rest Day Agreement. It was just as if he had used his day off to work in a grocery store. The organization surely would not contend that the grocer owed him time and one-half whatever his compensation might be because he worked the other days of the week as a telegrapher, covered by the Rest Day Agreement. In fact, we believe this case arose out of the close kinship between the dispatchers' and telegraphers' work. However close that kinship may be, we cannot let it influence our thinking in this case."

Applied to the instant case the opinion in Award 3674 shows that the rules covering Train Dispatchers would not apply to the service performed by Summerhays on May 20th and 21st, as he worked on a position not covered by Agreement.

Trick Dispatchers on the Grand Trunk Western have performed relief Chief Dispatcher work for many years. It serves to give them the needed experience for promotion to such positions. In this connection we cite the fact that there are two Chief Dispatchers and one Assistant Chief Dispatcher on the property; Chief Dispatcher W. W. Luckey was promoted from a Trick Dispatcher on March 1st, 1945; J. J. Herman was promoted from Trick Dispatcher to Assistant Chief Dispatcher on June 25th, 1942 and to Chief Dispatcher on May 16th, 1946. Assistant Chief Dispatcher D. Smith was promoted from a Trick Dispatcher on May 16th, 1946.

This claim has been handled in the usual manner up to and including the highest designated officer of the Carrier. Inasmuch as the claim is not supported by any rule it has been declined.

(Exhibits not reproduced.)

OPINION OF BOARD: On two of his regularly assigned rest days, claimant, a regularly assigned Relief Train Dispatcher, at the request of the Carrier filled the position of Chief Train Dispatcher. He was paid on a pro rata basis at the rate for Chief Train Dispatcher. His claim is for the difference of the pay received and pay at the time and one-half rate provided for in Paragraph 2 of Article 3 (a) of the Agreement.

The relevant parts of the agreement are as follows:

Article I—Definition.

"The term Train Dispatcher as hereinafter used shall be understood to include Trick, Relief and Extra Dispatcher only."

Article III—Rest Days and Relief Service.

"(2) Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days."

The Carrier declined the claim on two grounds:

(1) The position of Chief Train Dispatcher is outside the scope of the agreement, and on the days claimant relieved as Chief Train Dispatcher he could not claim the benefit of Article 3 (2) of the agreement.

(2) Claimant was not required to perform service and therefore may not claim the benefit of Article 3 (2) of the agreement.

As to the first ground, we have held in numerous awards that only the occupant of the position of Chief Train Dispatcher is excepted from the agreement and any employe relieving him for any cause would be entitled to the benefits of the agreement.

As to the second ground, claimant was requested by proper authority to work as Chief Train Dispatcher on the days in question. The fact that he was willing to do so does not mean he was not "required to perform service" within the wording and intent of Article 3(2). See Awards 5174, 4850 and 4461.

Neither of the grounds relied upon by the Carrier are tenable and the claim should have been allowed.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 20th day of June, 1951.