

Award No. 5400

Docket No. TD -5379

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Jay S. Parker, Referee

**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY (Eastern Lines)**

**STATEMENT OF CLAIM:** Claim of the American Train Dispatchers Association for and in behalf of Relief Train Dispatcher F. B. Hostetter, that:

1. The Atchison, Topeka & Santa Fe Railway System failed to compensate Relief Train Dispatcher Hostetter in accordance with the requirements of Article VI, Section 2, of the Rules Agreement, in effect at the time this dispute arose, and,

2. The Atchison, Topeka & Santa Fe Railway System shall now compensate F. B. Hostetter in an amount representing the difference between what he was paid and what he should have been paid for service rendered on September 29 and 30, 1949, in accordance with the intent of Article VI, Section 2, of the Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement on rules governing compensation, hours of service and working conditions, dated September 1, 1949, between the parties to this dispute, and applicable to the Claimant in this case, 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.

Claimant F. B. Hostetter is employed by this Carrier in the Emporia, Kansas, office. His regular position is that of regularly assigned Relief Train Dispatcher, which position was established by the Carrier under the provisions of Section 6, Article IV, of the Agreement. His regular tours of duty are as follows:

Thursdays—8:00 A. M. to 4:00 P. M.—Relieving 1st District Dispatcher  
Fridays—8:00 A. M. to 4:00 P. M.—Relieving 1st District Dispatcher  
Saturdays—8:00 A. M. to 4:00 P. M.—Relieving 2nd District Dispatcher  
Sundays—8:00 A. M. to 4:00 P. M.—Relieving 2nd District Dispatcher  
Mondays—4:00 P. M. to 11:59 P. M.—Relieving 2nd District Dispatcher  
Tuesdays—Off duty (Rest Day assigned to his own position)  
Wednesdays—Off duty (Rest Day assigned to his own position)

The Carrier under the provisions of Article VI, Section 2, instructed and required Claimant Hostetter to work in place of Train Dispatcher C. F. Behmer, 1st District, 8:00 A. M. to 4:00 P. M., Wednesday, September 21, 1949, through October 3, 1949, a total of 13 consecutive days, including the

By reason of his regular assignment as a regularly assigned relief Dispatcher, under Article IV, Section 6 of the Dispatchers' Agreement, there was established, Sunday, Monday, Thursday, Friday and Saturday of each week as the regularly assigned working days or days of work each week of the position to which Hostetter was regularly assigned, Thursday and Friday being the regularly assigned rest days of regularly assigned train Dispatcher, C. F. Behmer.

The only conclusions to be reached from any consideration of the facts of this dispute are that:

1. Hostetter's regularly assigned relief dispatcher's assignment included the protection of Mr. Behmer's rest days on Thursday and Friday of each week.
2. Hostetter protected Behmer's regular assignment during the period September 21 to and including October 3, 1949, and in addition thereto Hostetter also protected his own regular assignment on September 22, 23, 29 and 30, 1949.
3. Hostetter was paid at the straight time or pro rata rate for the service performed on his regular assignment on September 22, 23, 29 and 30, 1949 and was not as contended by the Dispatchers' Organization removed from Mr. Behmer's position on those dates in violation of Article VI, Section 2, of the Dispatchers' Agreement. In other words, Hostetter relieved Behmer on each day that the latter was assigned to work and he was, therefore, not removed from Behmer's assignment when used to protect his (Hostetter's) regular assignment on September 29 and 30, 1949.
4. There is nothing in Article IV, Section 2, of the Dispatchers' Agreement, or any other rule of that Agreement which gives a Dispatcher the right to work on his assigned rest days when there is a regularly assigned relief or unassigned Dispatcher available. As a matter of fact, Article IV, Section 1-a expressly provides otherwise.
5. There is nothing in Article VI, Section 2, of the Dispatchers' Agreement, or any other rule of that Agreement which requires payment at the time and one-half rate to a regularly assigned Dispatcher, as was Hostetter, the claimant, for service performed on his regular assignment.

In conclusion, it is the position of the Carrier that in order to determine the proper application of Article VI, Section 2, of the Dispatchers' Agreement, the language of that rule must be considered in conjunction with Article IV, Section 5 and Article VI, Section 3, both of which rules are referred to in Article VI, Section 2. While it is true that Article IV, Section 2, provides that rest days shall attach to the position, the reference to Article IV, Section 5, in Article VI, Section 2, plainly indicates that except as otherwise provided in Article VI, Section 3, a regularly assigned train Dispatcher is to retain the rest days of his regular position for pay purposes when used to relieve another train Dispatcher (not including Chief Dispatchers).

The instant dispute is clearly without merit or schedule support and must be denied.

**OPINION OF BOARD:** This is purely a money claim wherein the facts are not in dispute and the parties concede the sole issue involved is whether the employe on whose behalf the claim is made should be paid at the rate of time and one-half on Thursday and Friday, September 29 and 30, 1949, as contended by the Dispatchers' Organization or at the straight time rate paid by the Carrier.

During the period of time involved F. B. Hostetter, in accord with Article IV, Section 6 of the current Agreement, was regularly assigned at Emporia, Kansas, as a relief Train Dispatcher to perform rest day relief of regularly

assigned Train Dispatchers. The rest days of his position, Number 275, were Tuesday and Wednesday of each week.

C. E. Behmer, regularly assigned Train Dispatcher at Emporia, occupying Position Number 250, with rest days on Thursday and Friday, was off duty on Wednesday, September 21, for a hospital check-up and Carrier was advised he would have to remain in the hospital for an indefinite period. Hostetter, who normally performed rest day relief on Position Number 250 on Thursdays and Fridays of each week under his regular assignment, was the only qualified and available man to fill the vacancy created by Behmer's absence. He was assigned to the vacancy and filled it from September 21 to October 3, inclusive.

Article VI of the current Agreement deals with the basis of compensation. Section 2 thereof, so far as it pertains to the issues here involved, reads:

**"Except as provided in Section 3 of this Article VI, regularly assigned train dispatchers may only be required to perform relief work in cases of emergency and when unassigned train dispatchers are not available; when so used, they will not be paid for their regular assignment but shall be paid for any loss of time resulting from the Hours of Service Law, and, for the first three (3) working days on such relief work, they shall, subject to the provisions of Section 5 of Article IV, be paid pro rata the daily rate of the position filled or that of their own position, whichever is the higher; if such emergency continues for more than three (3) days, the train dispatcher first used thereon will not be removed, and payment thereafter shall be made at the time and one-half rate." (Emphasis supplied.)**

Nothing is to be gained by detail reference to the rate paid Hostetter for the entire time he was assigned to the vacancy. It will suffice to state that commencing with Monday, September 26, after being paid for three days at the daily rate of his own position or the one filled whichever was higher, he was paid at the rate of time and one-half for Monday, Tuesday and Wednesday, September 26, 27 and 28. On Thursday and Friday, September 29 and 30th, which as has been heretofore indicated were the rest days of Behmer's position and normally worked by Hostetter when operating on his regular assignment, he was paid straight time. For the next three days, Saturday, Sunday, and Monday, October 1, 2 and 3, the latter date being the last day on which he filled Behmer's position, he was paid at the rate of time and one-half.

The real ground for Carrier's denial of the claim and the gist of all arguments advanced by it before this Board in support of its position is that there is nothing in Article VI, Section 2, or any other rule of the Agreement which requires payment at the time and one-half rate to a regularly assigned Dispatcher, as was Hostetter, for service performed on his regular assignment. Otherwise, and perhaps more succinctly stated, its position is that it was not removing Hostetter from the assigned vacancy position when it paid him the rate of his own position because if he had not been so assigned he would have been required to work it anyway in performance of the duties of his regularly assigned position of relief Train Dispatcher. Let us see.

Turning to Article VI, Section 2, we note the compensation therein provided for is to be paid unless there is something to be found in Section 3 of the same Article or Section 5 of Article IV which precludes it. We find nothing in either of the sections last mentioned to sustain any such conclusion. Section 3, supra, provides that a Train Dispatcher used as a Chief Dispatcher takes the salary and working conditions of the latter position. Article IV, Section 5 reads that except as provided in Section 3 of Article VI of the Agreement, a regularly assigned Train Dispatcher required to perform dispatching service on either or both of the rest days assigned to his position will be paid at the rate of time and one-half. Hostetter was not being used as a Chief Dispatcher and the claim filed in his behalf is not for pay for the

assigned rest days of his position. Therefore it becomes clear that under the facts of this case neither of such sections have any application whatsoever.

Since it is conceded Hostetter filled the position for more than three days the conclusion just announced means that he was entitled to pay on the two days in question as claimed unless, of course, as the Carrier contends he was occupying his own regularly assigned position on those days.

As a general proposition it is our view that an employe properly assigned in relief to all the work belonging to a relief position is to be regarded as the temporary occupant of the assigned position and assumes not only its obligations but its emoluments until he is removed therefrom. In and of itself this would suffice to sustain the instant claim for Section 2, supra, expressly provides the Train Dispatcher first used will not be removed from the position if the emergency, as is the case here, continues for more than three days and that service thereafter will be paid for at the rate claimed by the Organization. However, we are not required to base this decision solely upon that premise. Article VI, Section 3, is supplemented by a Note stating that Section 2 has application only when a regularly assigned Train Dispatcher is taken from his own position to completely fulfill all the duties and responsibilities of another position. This Note clearly and unequivocally indicates that a Dispatcher assigned to completely fulfill all the duties and responsibilities of another Dispatcher position is "taken from his own position." This means that Hostetter, taken from his own position as the record clearly discloses, was performing service on Behmer's position, not on his own, on the dates in question notwithstanding that if he had not been removed from his own assignment he would have been required to perform its work on the Thursday and Friday involved at the pro rata rate.

In conclusion we cannot refrain from pointing out that the fallacy of Carrier's entire position is definitely evidenced by its own construction of the Agreement and the action taken by it in connection therewith. If, as it contends, Hostetter was performing service on his regular assignment on Thursday and Friday, September 29 and 30th, the conclusion is inescapable that he took over a new assignment on Behmer's position on the first, second and third days of October and, under the rule (Art. VI, Sec. 2), would have been entitled to pay for those days, which would be the first three working days of his new assignment, only at the pro rata daily rate of the position or that of his own position, whichever was the higher. Instead of paying him that rate the Carrier paid him at the rate of time and one-half for such three days thus definitely indicating its understanding that he was not working his own position when under his relief assignment he performed Behmer's work on the rest days of the latter's position.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 in failing to pay the employe named in the claim at the rate of time and one-half for the days therein described.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1951.