Award No. 5445
Docket No. TD-5349

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 "A") Claim of the American Train Dispatchers Association for and in behalf of the employes whose names are hereinafter shown, that:

1. The Missouri Pacific Railroad Company violated the intent of Article 5-(d) of its Agreement with the American Train Dispatchers Association when this Carrier failed to furnish, within the time limit prescribed by that Rule, or not at all, a copy of notice of the Carrier's intention to abolish the positions of the Claimants listed in below paragraph 2, hereof, and

2. The Missouri Pacific Railroad Company shall now compensate the below listed Claimants, in the amounts shown, for time lost by them due to the Carrier's failure to comply with the requirements of said Article 5-(d) of the Agreement, viz:

Claimants	Location	No. of Days	Daily Rate	Total Amount
*F. E. Nigh	Coffeyville, Kans.	31	$19.31	$598.61
*W. R. Harper	" "	34	19.31	656.54
*F. M. Gonder	" "	25	19.31	482.75
*C. A. Brady	" "	34	19.31	656.54
*W. E. Butler	" "	4	19.31	77.24
*H. P. Caudell	" "	33	19.31	637.23
*D. B. Davidson	" "	19	19.31	366.89[1]
*G. E. Moore	" "	33	19.31	637.23[1]
*A. W. Rees	" "	31	19.31	598.61[1]
*A. E. Loyd	" "	30	19.31	579.30
*H. F. Logsdon	" "	31	Various	652.71
*R. V. Falkner	" "	32	20.90	667.26
*E. L. Graybeal	Osawatomie, Kans.	32	19.31	617.92
*B. B. Hughes	" "	32	19.31	617.92
*F. H. Austin	" "	32	19.31	617.92
*E. H. Short	" "	32	Various	681.06
*V. B. Smith	Pueblo, Colorado	31	19.31	598.61
*R. Cowne	" "	32	19.31	617.91
*C. W. Newbrey	" "	13	19.31	251.03
H. L. Swanson	Atchison, Kans.	3	20.90	62.70
L. E. August	" "	3	19.31	57.93
M. T. Jones	" "	3	19.31	57.93
R. O. Hill	" "	3	19.31	57.93

Claimants	Location	No. of Days	Daily Rate	Total Amount
R. B. Merriman	" "	3	19.31	57.93
L. L. Cochran	" "	3	19.31	57.93
H. Neal	Jefferson City, Mo.	3	19.31	57.93
E. W. Richardson	" " "	3	19.31	57.93
W. J. Power	" " "	3	19.31	57.93
C. L. Thomas	" " "	3	19.31	57.93
E. McLean	" " "	3	19.31	57.93
W. T. Butler	" " "	3	19.31	57.93
H. H. Buxton	" " "	3	19.31	57.93
L. E. Morse	" " "	3	20.90	62.70
A. K. Boyce	" " "	3	20.90	62.70
J. W. Sloan	Little Rock, Ark.	3	20.90	62.70
A. D. Jones	" " "	3	19.31	57.93
H. R. Raef	" " "	3	19.31	57.93
T. O. Wecks	" " "	3	19.31	57.93
S. W. Gordon	" " "	3	19.31	57.93
F. H. Neel	" " "	3	20.90	62.70
E. L. Krepper	Monroe, Louisiana	3	19.31	57.93
T. V. Evans	" "	3	19.31	57.93
E. K. Hunt	" "	3	19.31	57.93
J. R. Coulter	" "	3	20.90	62.70
M. S. Streeter	" "	3	19.31	57.93
T. H. Turner	" "	3	19.31	57.93
C. C. Westmoreland	" "	3	19.31	57.93
H. C. Wilson	" "	3	19.31	57.93
R. L. Clay	Nevada, Missouri	3	19.31	57.93
B. M. Ritchey	" "	3	19.31	57.93
T. E. Bolson	" "	3	19.31	57.93
J. C. McVey	" "	3	19.31	57.93
A. B. Caldwell	" "	3	19.31	57.93
T. S. Potter, Sr.	" "	3	19.31	57.93
T. S. Potter, Jr.	" "	3	19.31	57.93
K. W. Burton	Pacific, Missouri	3	19.31	57.93
C. L. Chappuis	" "	3	19.31	57.93
W. R. Gallagher	" "	3	19.31	57.93
A. B. Coe	" "	3	19.31	57.93
J. F. Dee	Poplar Bluff, Mo.	3	19.31	57.93
W. E. Daniel	" " "	3	19.31	57.93
C. Keller	" " "	3	19.31	57.93
F. B. Tinsley	" " "	3	19.31	57.93
R. L. Russell	" " "	3	Various	63.74
W. O. Elson	Wichita, Kans.	3	19.31	57.93
R. V. Johnson	" "	3	19.31	57.93
A. E. Jones	" "	3	19.31	57.93
A. B. Bates	" "	3	19.31	57.93
H. Winn	" "	3	19.31	57.93
C. A. Forbes	Wynne, Arkansas	3	20.90	62.70
C. W. Backs	" "	3	19.31	57.93
A. J. Daspit	" "	3	19.31	57.93
G. R. Martin	" "	3	19.31	57.93
R. W. Hartzel	" "	3	19.31	57.93
H. D. Cleaver	" "	3	20.90	62.70

(*—Denotes that no copy of notice was furnished the General Chairman at any time.)

(1—Denotes that this includes amount of compensation due under CLAIM-E.)

EMPLOYES' STATEMENT OF FACTS: An Agreement on rules governing rates of pay, hours of service and working conditions of train dispatchers, between the parties to this dispute was in effect at the time this

It is believed that the Carrier can rightfully assume that the Dispatchers' Organization, upon realizing that there was no merit to the claims filed for all the time that the train dispatcher positions were abolished, is now attempting to use those claims as a basis for progressing claims to this Board for different amounts and on an entirely different basis because the Organization also realizes that it failed to have dispatchers file claims for the days and amounts shown in the Statement of Claim within the time limitation rule of the agreement—Article 8, paragraph (f). In other words, the Dispatchers' Organization is assuming that it has the right to present claims to this Board by making change in days, amounts and bases of claims, thus defeating the real intent and purpose and plain language of Article 8, paragraph (f), of the agreement. The Organization does not have this right and it should not be granted by this Board. For ready reference, paragraph (f) of Article 8 reads:

"ARTICLE 8

(f) Time Limitation of Monetary Claims.

Claims involving monetary consideration, not including any matter connected with or arising out of dismissal or other discipline, will be presented, as herein provided, within sixty (60) days from date of the occurrence on which the claim or complaint is based, otherwise such monetary claim arising out of such occurrences will be waived, except from date such claim is presented to an official of the railroad."

The Carrier's Statement of Facts shows conclusively that the provisions of Article 5, paragraph (d), were carried out by the Carrier and that the General Chairman, who is authorized to make and maintain agreements on the Missouri Pacific Railroad for the train dispatchers, was fully aware, in advance of the strike on September 9, of just exactly what was happening, what was going to happen and did actually make an agreement in which he acknowledged his full understanding of the whole situation.

The Carrier believes that in all fairness to the railroad the Board should refuse to recognize this claim as a claim which is properly before the Board, and, further, that if the claim is to be recognized and handled by the Board the American Train Dispatchers Association should be required to state in detail the basis of the claim and its reason for its failure to file claims in the proper manner and progress them through the regular channels, and that the Carrier be granted ample time in which to prepare a submission or statement in connection therewith.

(Exhibit not reproduced.)

OPINION OF BOARD: On September 9, 1949, the Missouri Pacific Railroad discontinued operation of all trains due to its train and engine service employes leaving the service of the Company on strike.

The first questions raised are jurisdictional and must be disposed of before any phases of the case can be otherwise considered.

On September 5 and 6th, 1949, notices were served on occupants of all positions here involved that effective September 9, 1949, due to the calling of the strike as of that date, their positions were being abolished. The only objection to the sufficiency of such notices as to daily employes is that as to a few positions the Carrier, due to a clerical error, failed to give a copy of the notice to the General Chairman and as to some others did not give that individual notice until after the effective date of the abolishment. The Employes also claim that the positions of monthly rated employes could not be abolished until the expiration of the month.

The Carrier concedes that on November 4 and 5th, 1949, following the close to the strike, blanket claims were filed by the Organization on behalf of all train dispatchers involved based on the ground its action in abolishing their positions was in violation of rules of the current Agreement. These

claims, it should be added, as shown by exhibits attached to the Carrier's submission, listed the name of each dispatcher, his assigned position, the time lost by him during the strike, and the total amount alleged to be due him as a result thereof. It is also to be noted the Carrier likewise admits such claims were progressed on the property to the highest reviewing officer designated by it for that purpose and that there, after divers conferences, such individual indicated, they would be denied in toto.

While it is true the Organization filed several claims with the Carrier on behalf of employes located in different territories, they were all of like form and it is clear the dispute raised thereby was treated on the property as a unit. Therefore the claims as filed are entitled to be so regarded and will hereafter be so referred to and considered.

The Employes assert, and our examination of the record convinces us it is true, that while the claim was being progressed on the property the grounds on which it was based were thoroughly discussed and the various rules of the Agreement, claimed to have been violated, including Article 5 (d) here involved, were called to the Carrier's attention. The Employes also assert that during that time the Carrier, in addition to contending the Agreement had not been violated made some objection to the claim as filed on the ground it was in blanket form.

In any event following declination of such claim the Employes filed twelve separate claims with this Board identified as Dockets TD-5349 to 5359 inclusive, and Docket TD-5430, each relating to a claimed violation of certain but different rules of the Agreement between the parties in the abolishment of train dispatcher positions during the strike. Docket TD-5349, presently involved, is predicated upon allegations the Carrier violated Article 5 (d) of the Agreement when, in abolishing the positions therein named, it failed to furnish copies of the notice of abolishment as required by its terms. The other dockets mentioned are based upon alleged violations of divers other rules of the Agreement.

The overall jurisdictional question raised by the Carrier seems to be founded upon several theories as evidenced by a statement appearing in one of its submissions which reads: "Your Board will note the present claims now before you were not changed during the time they were being progressed on the property, but the blanket claim for all dispatchers for all days lost during the strike was abandoned after it was declined by the Carrier's Chief Personnel Officer, and twelve (12) separate claims for various employes for various days and amounts and based upon various alleged facts and rules and contentions were then filed with your board."

The first theories advanced by the Carrier on the point in question appear to be this Board acquires no jurisdiction over a blanket claim covering all employes affected by the action of a Carrier and/or a claim which merely aserts in general terms that the action complained of was in violation of the Agreement. There is little merit to either of these theories. Our records are full of cases where claims filed by an Organization for one employe, and others affected, have been recognized as valid. The same holds true of cases where rules of an agreement, relied on for the first time before this Board in support or defense of a claim, have been applied in granting both denial and sustaining awards.

Concluding that it is better practice to file claims on the property which are full and complete, we do not agree with Carrier's position that when, in Award No. 5077 it was said "The claim should put in issue the precise rules involved in the alleged violation and claimant's theory of the claimed violation" this Board meant to hold or even imply that language should be construed literally or that failure to specify the exact rules relied on upon the property deprived it of jurisdiction where the dispute was referred to it by petition in conformity with the Railway Labor Act. Where—as here—and we might add as was elsewhere indicated in the Opinion of the Award to which we have just referred—by the nature of the claim itself the Carrier

was continuously on notice of what was involved in the alleged violation of the Agreement, it would never do, in fact it would be contrary to the spirit and intent of the Railway Labor Act, to disclaim jurisdiction on the ground inherent in the Carrier's position on this point.

Next the Carrier relies on two contentions which are so closely related they can be disposed of together. One is the claim as originally filed on the property was abandoned, the other that the claim here presented is not the same as was handled on the property. Both are asserted to preclude this Board from exercising jurisdiction. If factually correct there might be considerable merit to these contentions. But let us see. Below the Employes presented a claim to the effect their positions were abolished in violation of rules of the Agreement and compensation was claimed for all time lost thereby. Here, when analyzed from a practical standpoint their claim is their positions were abolished in violation of one rule. The actual result is that they are still asserting the same claim but are limiting their asserted right to a sustaining award to a violation of one rule of the Agreement. Just why they should elect to do this when, as we have seen in preceding paragraphs, they would have been entitled to rely on any and all rules they might contend had been violated is more than we can fathom but they have done so and our province is not to pass upon the wisdom of their action but determine whether in so doing they have run afoul of a jurisdictional or procedural issue which will deprive them of the right to have their cause disposed of on the merits. Under the existing circumstances we do not believe it should be said thaey have abandoned their claim or that there is a fatal variance between the original claim and the one now in question. The most that can be said for the last point, as we have indicated, is that they have merely restricted its scope.

Next it is argued this is a claim involving monetary consideration which was not presented to the Carrier within 60 days from the date of the occurrence on which it is based, hence it is barred by the provisions of Article 8 (f) of the Agreement providing that claims not so presented will be waived. The essence of this claim for jurisdictional purposes is that the claim has not been properly filed and progressed through the regular channels provided for in the Agreement. The initial claim was filed with the Carrier within the period of time required by the rule and we have already indicated our view the present claim is not new or to be regarded as fatally different from the original. Therefore the Carrier's contention on this point cannot be upheld.

Finally the Carrier contends the filing of the 12 claims, heretofore referred to, identified and described, is not in conformity with procedure contemplated by the Railway Labor Act and in particular Title I, Section 2 (5), setting forth the general purposes of the Act, which insofar as here pertinent, reads:

> "(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions, * * *."

We regard this last contention as far more important and serious than any objection heretofore advanced by the Carrier.

Just what constitutes "orderly procedure" within the meaning of that term as used in the foregoing quotation from the Railway Labor Act is not an entirely new question. In commenting on that subject this Board in Award No. 4346, later quoted with approval in Award No. 5077, said:

> "Naturally, this Board in its deliberations should be guided by the expressed policy of the Railway Labor Act and should expect the parties to discharge their respective duties in connection with grievances as outlined therein. Were we to decide this dispute on the basis of the present record, we do not believe that such action would be in harmony with the general purpose of the Act, as set

forth in Section 5, for it does not contribute to orderly settlement of disputes to consider a claim based on a grievance which in the course of progress to this Board changes in character from that which has been discussed on the property."

From what has been heretofore stated it is crystal clear, and we pause to note that if it were not we would be bound to take notice of our own records disclosing the fact, that what the Employes are here, and in Dockets TD-5350 to 5359, inclusive, and Docket TD-5430, seeking to do is to piecemeal what started out as a single dispute on the property and have this Board determine in twelve separate cases, involving divers rules of the same Agreement, what could properly and would ordinarily be determined in one proceeding.

It is, of course, obvious the quotation from Award No. 4346 is limited to the proposition that it does not contribute to the orderly settlement of disputes to consider claims which have been changed in the course of the progress to this Board. Nevertheless it would seem from analogous reasoning that the filing of numerous claims, all predicated upon a single dispute and the same Agreement, would also violate the spirit and intent of the heretofore quoted provision of the Railway Labor Act. Of a certainty it would not contribute to the prompt settlement of disputes as contemplated by its terms.

But failure to follow a course that would contribute to the prompt and orderly settlement of the instant dispute is not the only requirement of the Railway Labor Act with which the Employes have failed to conform. Title I, Section 3, First (i) reads:

> "The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred **by petition** of the parties or by either party to the appropriate division of the Adjustment Board **with a full statement of the facts and all supporting data bearing upon the disputes.**" (Emphasis added.)

Heretofore we have indicated this claim was treated as a unit or single dispute on the property. In such a situation we believe the foregoing section contemplates and requires that one petition, containing a full statement of the facts and all supporting data bearing upon the dispute be filed with this Board so that ultimately it can pass upon and determine all issues involved in the controversy with promptness and efficiency. This construction, we may add, is in line with and gives force and effect to the phrase "prompt and orderly settlement of disputes" as used in Title I, Section 2 (5), supra.

Having reached the foregoing conclusion the only question remaining is what should be done with this claim and the eleven others which should have been referred to us in one petition or submission.

This Board is fully cognizant of the fact that its duty is to interpret contracts involved in disputes and not dismiss cases except as a last resort. However, there comes a time when due to the action of one or the other of the parties it is confronted with a situation where there appears to be no other recourse. Without laboring the subject further it suffices to say that after long consideration it has decided that this case and the eleven others to which we have referred simply cannot be disposed of with justice to the parties if considered as separate units and that the difficulties to be encountered in attempting to treat them in their present form as a single case would be insurmountable. Moreover the Carrier, as is its right, is demanding that if the dispute is to be heard on its merits that it be presented to the Board in the manner contemplated by the Railway Labor Act.

We do not agree that failure to so conform requires a dismissal of this and the other related claims with prejudice but we do believe that under the existing conditions and circumstances sound practice requires that they be dismissed without prejudice to the Employes' right to bring the entire dispute to this Board in a single proceeding if in the exercise of future judgment they deem that course advisable. Therefore it is so ordered.

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 claim is not presented to this Board in conformity with requirements of the Railway Labor Act.

AWARD

Claim dismissed without prejudice in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of September, 1951.