

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 "C") Claim of the American Train Dispatchers Association that:

(1) The Missouri Pacific Railroad Company violated the intent of Article 1, Scope of its Agreement with the American Train Dispatchers Association, when on September 10, 13, 14, 15, 16, 19, 26 and 29, and on October 3, 4, 10, 12, 13, 17 and 21, 1949, this Carrier operated the trains of the Louisiana & Midland Railroad over this Carrier's Collinston subdivision between Concordia Junction and Vidalia (dispatching territory included within that of the regular assignment of Claimants listed in below paragraph 2 hereof) without direction or supervision of any train dispatcher but, instead, by authority and direction of employes not subject to the Train Dispatchers' Agreement, and

(2) The Missouri Pacific Railroad Company shall now compensate the below listed Claimants for all time lost due to this Carrier's violation of the intent of said Article 1, viz:

Claimants	Location	No. of Days	Daily Rate	Total Amount
T. H. Turner	Monroe, La.	10	\$19.31	\$193.10 <sup>1</sup>
C. C. Westmoreland	" "	7	19.31	135.17 <sup>1</sup>
H. C. Wilson	" "	13	19.31	251.03 <sup>2</sup>
D. D. LaCaze	" "	6	19.31	115.86

<sup>1</sup> Includes one day's pay due under CLAIM-A).

<sup>2</sup> Doe not include compensation due under CLAIM-A).

**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 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:

"Article 1 (a) Scope: (Effective January 1, 1948).

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

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."

It is also the position of the Carrier that Article 1 of the agreement does not support the claims which the organization has presented to the Board. There is no requirement on the part of the railroad to provide train dispatching service when in the opinion of the responsible officers, train dispatching service is not needed. No train dispatching service was needed or required for the movement of one Louisiana Midland Railway Company train each day between Concordia Junction and Vidalia, a distance of eight miles, during the period operation of Missouri Pacific trains had been discontinued. The method of operation of trains on the lines of the Missouri Pacific Railroad is a matter to be determined solely by the officers of the railroad, and unless some dispatching service is required in such operation there is no requirement in Article 1 of the agreement with the Dispatchers to assign train dispatchers. To put it simply, if the railroad is willing to operate all of its trains under flag protection, or under protection of suitable rules, without direction of a train dispatcher, it is the right of the railroad to do so. Article 1 of the agreement with the Dispatchers' Organization does not guarantee that the railroad will require dispatching service for the movement of its trains.

Another matter of interest concerning the claim is the statement of the Dispatchers, in Paragraph 1 of the claim, that Louisiana Midland Railway Company trains operated on the Collinston Subdivision a total of fifteen days, yet they list four claimants and ask for payment of 36 days' pay. The Carrier is unable to reconcile the number of days pay claimed with the number of days the trains were operated. It is, therefore, concluded that not only have these claims been presented to the Board improperly but the claims are so indefinite that it is almost impossible to make a clear submission and argument to the Board.

Attention is also directed to the notations opposite the claims, wherein the organization would link this claim with some other claim which it has identified as "Claim A."

The Board should refuse to docket this claim, but if same is docketed it should be declined forthwith.

(Exhibit not reproduced.)

**OPINION OF BOARD:** For all essential purposes the facts of this case, the issues involved and the principles on which it is to be decided are the same as those set forth in the Opinion of Award No. 5446, this day adopted. Therefore based on that Award and what was said and held in Award No. 5445, also adopted as of this date, we hold the claim must be dismissed without prejudice.

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

**AWARD**

Claim dismissed without prejudice as per the Opinion and Findings of this Award and Awards Nos. 5445 and 5446 heretofore decided.

**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.