

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 "F")

Claim of the American Train Dispatchers Association that

1. The Missouri Pacific Railroad Company violated the intent of its Letter-Agreement dated December 6, 1947, and Article 1 and Article 3 of its current agreement with the American Train Dispatchers Association when this Carrier filled the regularly assigned positions of the claimants listed in below paragraph 2 hereof, from September 10 to October 3, 1949, both dates inclusive, with division officers of the Carrier who are not subject to the scope and other provisions of the agreements and thereby prevented these claimants from fulfilling the duties of the positions which they had acquired in accordance with the provisions of the agreements.

2. The Missouri Pacific Railroad Company shall now compensate the below listed claimants for time lost by them due to the failure of this Carrier to comply with the intent of said Agreement;

Claimants	Location	No. of Days	Daily Rate	Total Amount
E. H. Short	Osawatomie, Kas.	31	Various	\$681.06 <sup>1</sup>

<sup>1</sup> Denotes that this includes amount due under Claim "A".

**EMPLOYEES' STATEMENT OF FACTS:** An agreement on rules governing rates of pay, hours of service and working conditions of train dispatchers and a Letter-Agreement dated December 6, 1947, pertaining to relief of Chief Train Dispatchers (titled Division Trainmasters on this property), between the parties to this dispute were in effect at the time this dispute arose. A copy of this Agreement and Letter-Agreement above referred to is on file with the Board and are, by this reference, made a part of this submission as though fully incorporated herein.

The pertinent part of Letter-Agreement above referred to reads as follows:

"This is to advise that it will be our policy to continue our present practice of requiring Chief Train Dispatchers (now titled Division Trainmasters on this property and hereinafter referred to as Chief Dispatchers) to take one regularly assigned day off per week,

paragraph (f). In other words, the Dispatchers' Organization is assuming it has the right to present claims to this Board by making a change in the bases of claims and thus defeat 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."

It is further the position of the Carrier that in view of the fact it retained an officer on the payroll, viz: Division Trainmaster, at Osawatomie, there was no necessity for paying a dispatcher one day per week on the theory that he was relieving the Division Trainmaster. Likewise, under the peculiar circumstances concerning the Assistant Chief Dispatcher, H. B. Brandon, who was formerly Division Trainmaster assigned nights and who was kept on the payroll by the Carrier during the period of the strike, requirement was not placed on the Carrier to put a train dispatcher on the payroll as Assistant Chief Dispatcher two days of each week on the theory that such dispatcher would be relieving Assistant Chief Dispatcher Brandon on his rest days.

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 reasons 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:** This is one of a series of twelve cases filed with this Board by the Employees with the obvious intention of having it hear and determine that many different phases of a dispute which was progressed on the property as a unit.

The claim is based on the same facts as those involved in Award No. 5445, this day adopted, the only important difference being that here the Employees claim that as a result of their positions being abolished because of a strike the Carrier prevented them from filling such positions and permitted other employees to do so who were not covered by the Scope Rule of the current Agreement, in violation of its terms.

Here as in the Award just mentioned, the Carrier contends the Employees' action in filing twelve different cases with this Board when all issues therein involved could and should have been submitted in a single proceeding does not comply with requirements of the Railway Labor Act which contemplates that a dispute progressed and determined on the property as a unit will be presented to the Board by a single petition or submission with a full statement of the facts and all supporting data bearing thereon in order that there may be a prompt and orderly settlement of the matters therein involved. We agreed with the Carrier's contention in such Award and held the claim therein involved should be dismissed without prejudice to the Employees' right to file a subsequent proceeding in the manner contemplated by

the Railway Labor Act if in the exercise of future judgment it decided it was expedient to do so.

The conclusion reached in Award No. 5445 controls our decision in this case. Therefore based on what is there said and held, we hold the instant claim is to be dismissed as therein indicated. 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 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 claim should be dismissed without prejudice for the reasons and on the grounds set forth in Award No. 5445.

#### AWARD

Claim dismissed as per 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.