

Award No. 5451
Docket No. TD-5355

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-G) Claim of the American Train Dispatchers Association that:

(1) The Missouri Pacific Railroad Company violated the rules of its Agreement with the American Train Dispatchers Association when, during the period of September 9 and October 23, 1949, both dates inclusive, this Carrier caused the chief train dispatcher and the second trick assistant chief train dispatcher, respectively to work twelve (12) hours per day, and thereby prevented the regularly assigned third trick assistant chief train dispatcher, Mr. A. K. Boyce, from performing the duties of that position which he had acquired in accordance with the provisions of the Agreement, and,

(2) The Missouri Pacific Railroad Company shall now compensate the said A. K. Boyce in the amount of *\$689.70 which represents the monetary loss he sustained by reason of this Carrier not permitting him to perform the duties of his position for a period of 33 actual working days at \$20.90 per day.

(*—Denotes that this does not include amount 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 train dispatchers. It is agreed that one Chief Dispatcher, (now titled Division Trainmaster on this property) in each dispatching office shall be excepted from the scope and provisions of this agreement.

"(b-1) Definition of Assistant Chief Train Dispatcher Positions:

This class shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division, or other assigned territory, involving the supervision of train

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 Jefferson City, and, further, in view of the peculiar circumstances concerning the Assistant Chief Dispatcher, Mr. Hopkins, who was formerly Division Trainmaster assigned nights, being kept on the payroll by the Carrier during the period of the strike, such did not place a requirement on the Carrier to retain the position of Assistant Chief Train Dispatcher which was formerly occupied by A. K. Boyce.

It is the very definite position of the Carrier that there was no work performed as Assistant Chief Dispatcher by either the Division Trainmaster or Assistant Chief Dispatcher Hopkins during this period.

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.

OPINION OF BOARD: The issues and principles decisive of this case have been fully discussed and determined in Award No. 5445, decided currently herewith. Therefore, based on what is there said and held the claim must be dismissed without prejudice. 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 be dismissed for the reasons and upon the grounds stated and set forth in the Opinion of Award No. 5445.

AWARD

Claim dismissed without prejudice as per 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.