Award No. 5674
Docket No. TD-5645

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SACRAMENTO NORTHERN RAILWAY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Sacramento Northern Railway failed and refused to properly compensate Relief Dispatcher F. R. Justis for rest day relief service performed on its chief train dispatcher position during a period between June 2, 1950, and August 6, 1950, and

(b) The Sacramento Northern Railway shall now be required to compensate Relief Dispatcher F. R. Justis for the difference between what he was paid and what he should have been paid pursuant to the provisions of Rule 23 of the current agreement for rest day relief service on Carrier's chief train dispatcher position during the period set forth in paragraph (a) hereof.

EMPLOYES' STATEMENT OF FACTS: There exists a schedule agreement between the parties to this dispute, effective April 1, 1945, last revised August 26, 1949, effective September 1, 1949. A copy of this schedule agreement and all revisions of same are on file with your Honorable Board and each and all of them are, by this reference, made a part of this submission as though each and all of them were fully set out herein.

The rules of the current agreement pertinent to the claim here submitted are as follows:

"RULE 6. REST DAYS—RELIEF SERVICE.

"(d) Relief of excepted chief train dispatcher for his annual vacation and other periods of absence from his position will be made by qualified train dispatchers from the seniority district involved.

"A weekly rest day will be assigned the excepted chief train dispatcher position as a part of the weekly schedule of work for relief train dispatcher assignment.

"(e) Where relief requirements regularly necessitate four (4) or more days' relief service per week, relief dispatchers shall be employed, regularly assigned and compensated at the rate applicable to positions worked. When not engaged in dispatching service, they

letter dated November 25, 1949, the end result would be that the daily rate of pay for the relief chief train dispatcher would be computed in accordance with Rule 23 of current agreement, or on a 261 day divisor. They both originate out of the Five Day Week Agreement, effective September 1, 1949, and had the Board's Order accompanying Award 5111, Docket TD-5109, required payment, the claimant would have been compensated.

Award 1215, Third Division, with Referee Harris L. Danner, recognized the well-established rule of splitting causes of action. There is neither reason nor justice in a rule which would permit the American Train Dispatchers Association to divide a question into as many parts as suits the convenience without regard to inconvenience, hardship or expense to the Carrier. As stated in the case of Baltimore Trust Co. vs. North Coal Mining Company, 25 F Supp. 968:

> "The rule of prohibiting the splitting of a cause of action is a rule of procedure intended for preventing harassment of persons in business and for peace of society generally, and to prevent multiplicity of actions."

It is the Carrier's position that this claim should be denied. It is in violation of:

(1) Letter Agreement between the parties; and,

(2) Fundamental rule of law prohibiting splitting a cause of action.

All of the above has been presented to the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: This claim has to do with certain dates between June 2nd, 1950 and August 6th, 1950 when Claimant occupied the position of chief train dispatcher on the rest day of said position with reference to the amount of compensation or rather rate of compensation Claimant would be entitled to for services rendered.

By way of defense, Respondent urged the claim we are concerned with first commenced on November 25th, 1949, by a letter from Petitioner to Respondent but that said claim was abandoned or waived in that certain letter dated May 29, 1950, from Petitioner to Respondent in favor of an Award to be let by this Board covering the claim in Docket TD-5109 and that Respondent by its letter dated June 6, 1950 accepted the proposal contained in the next to the last above mentioned letter. Respondent further urged that Petitioner in prosecuting the instant claim in fact was splitting his cause of action.

In order to avoid confusion and that there may be no doubt concerning the above and foregoing, we think it proper to quote the following from Carrier's "Position", to wit: "Secondly, by Vice President Geil's agreeing on manner in which the dispute would be settled, the subsequent filing of the claim in this docket constitutes splitting a cause of action. In both the claim contained in Docket TD-5109 and the claim originally filed in former General Chairman Chapman's letter dated November 25, 1949, the end result would be that the daily rate of pay for the relief chief train dispatcher would be computed in accordance with Rule 23 of current agreement, or on a 261 day divisor. They both originate out of the Five Day Week Agreement, effective September 1, 1949, and had the Board's Order accompanying Award 5111, Docket TD-5109, required payment, the claimant would have been compensated."

Accordingly, we think the issue is joined over the interpretation to be given the above mentioned letters and the effect and meaning of said Award. This Board let sustaining Award 5111, Opinion by Referee Wenke, on Docket TD-5109, on November 28th, 1950. Reference is here made to the claim therein

and to the Award which, we think, is authority for the proposition that all chief train dispatcher positions are subject to the terms and provisions of the Chicago Agreement. Such was the issue determined by said Award, no more no less. It then follows the holder of the Saturday relief day assignment should be appropriately compensated for work performed subsequent to the effective date of said Agreement unless the effect of the aforesaid letters be as claimed by Respondent. This is impliedly set forth by Referee Wenke in the concluding paragraph of his Award.

The most we can conclude from a careful examination of the above mentioned letters is the Employes concluded to defer their efforts to establish a rate. The claim we are concerned with deals with a time period subsequent to the letters and is related to the Award only in so far as the question relative to what type of position or category it should be placed in. Except as above stated, we fail to see in what way the issues in said Dockets are interrelated.

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 facts of record warrant an affirmative finding.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.