

Award No. 5686

Docket No. TD-5755

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee.

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SACRAMENTO NORTHERN RAILWAY

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

(a) The current agreement effecting rates of pay, rules and working conditions between the parties to this dispute applies to the Carrier's chief train dispatcher position, and

(b) The Carrier assigned Mr. J. E. Taylor to its chief train dispatcher position on May 25, 1950, because he had been, in accordance with the provisions of the Agreement, the successful applicant for the position which the Carrier had bulletined, also in accordance with the provisions of the Agreement, to train dispatchers under date of May 19, 1950, and

(c) Between May 26, and August 12, 1950, both dates inclusive, the Carrier failed to compensate Claimant Taylor in accordance with the provisions of Rule 5 (b), Rule 6 (a) and Rule 23 of the said Agreement, and

(d) The Carrier shall now be required to pay Mr. J. E. Taylor the difference between the amount he has been paid for the period mentioned in above paragraph (c), and the amount he should have been paid if Carrier had compensated him in accordance with the above mentioned rules of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: With respect to previous and existing agreements between the parties to this dispute and which have a bearing on the issues set forth herein; a Schedule Agreement was consummated effective October 16, 1936. That Agreement was revised effective April 1, 1945. The latter Agreement was subsequently partially revised effective September 1, 1949. The Agreement, effective April 1, 1945, and the revision of September 1, 1949, constitute the current Schedule Agreement between the parties; both of them are on file with your Honorable Board and are made a part of this submission by this reference the same as though they were fully set out herein.

The Agreement effective October 16, 1936, among other rules, contained the following:

"Agreement between Sacramento Northern Railway and the American Train Dispatchers Association—Governing the hours of service, working conditions and wages of train dispatchers.

OPINION OF BOARD: This docket involves a claim by Dispatcher J. E. Taylor for certain monetary payments which the Association contends is due him because Respondent Carrier failed to compensate him in accordance with the terms of the Agreement when Claimant was assigned to the position of Chief Train Dispatcher between May 26 and August 12, 1950.

The decision on this claim turns upon an interpretation of the Scope Rule (Rule 1) of the Agreement and the "Mitchell Settlement" of November 20, 1942. The Petitioner contends that under the terms of these two instruments the Chief Dispatcher position here in question is subject to all the terms set forth in the Agreement. The Respondent contends that the Chief Dispatcher position is an "excepted" position from the Scope Rule and the "Mitchell Settlement," save with respect to Rule 6 (d) and 8 (c) which it has been agreed would apply.

If the Petitioner's position with respect to the Chief Dispatcher position being within the scope of the Agreement is upheld, then these claims should be paid. If on the other hand Respondent's position that the position is "excepted" save as noted above, then there is no basis for requiring the payment of the claims.

The Scope Rule (Rule 1) here involved reads as follows:

"These rules shall govern the hours of service and working conditions of train dispatchers.

The term 'train dispatcher' as herein used shall be understood to include chief, trick, relief and extra train dispatchers, excepting only such chief dispatcher as is actually in charge of train dispatchers and telegraphers and in actual control over the movement of trains, on an assigned territory; to supervise the handling of trains and the distribution of power and equipment incident thereto; to perform related work; and have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more than one chief train dispatcher."

In addition to the Scope Rule quoted immediately above, reference is made to the "Mitchell Settlement" of November 20, 1942. The Association contends that since in arriving at that Settlement negotiations were carried on concerning the re-establishment of the Chief Dispatcher position, and inasmuch as it was established and specified that "the Chief Dispatcher's position when re-established shall be bulletined for the seniority choice of trick dispatchers," the Carrier thereby agreed to bring the position under the full coverage of the Agreement.

We cannot agree with this interpretation of the Settlement. There is no language in the Settlement which can be construed to bind the Carrier to such conclusion. Had full coverage been intended it would have been simple enough to have so stated. Instead limiting language is used which would seem to indicate that general coverage was not contemplated.

With respect to the Scope Rule, there is no question but what the Chief Dispatcher position is "excepted" provided certain duties and responsibilities stated in the Rule are assumed and performed by such Dispatcher. The question here is whether Claimant during the period in question assumed and performed duties such as to put his position in the "excepted" category under the Rule. The record does not answer this question with complete satisfaction, although there is substantial evidence to the effect that the position as held by Claimant entitled it to an "excepted" classification within the reasonable contemplation of the Rule. This is supported by certain documents submitted by the Carrier relative to the duties actually performed by Claimants and other occupants of the same position.

In addition, the record contains two citations which indicate that Association officials did not regard this particular Chief Dispatcher position as

under the full coverage of the Agreement a few months prior to the time for which the instant claim was filed.

First, in a letter by the Association's Vice President, dated September 2, 1949 the following sentence appears, "Except for Item 4 of the letter of the 30th, (Item 4 concerned adjustment in rate of pay for Chief Dispatcher), which is entirely a **Management question** (emphasis supplied). Thus it appears that the representative of the Association conceded that the position in question was covered by the Agreement only in certain limited respects.

Second, the record shows that Claimant and other occupants of the Chief Dispatcher position have exercised rights under Rule 9 of the Agreement which is an arrangement whereby a Dispatcher who accepts a supervisory or official position may return to the ranks of the Dispatchers upon relinquishing such official position.

In view of the circumstances involved and the applicable rules of the Agreement we must conclude that this claim lacks merit.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of March, 1952.