Award No. 5716
Docket No. TD-5738

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WABASH RAILROAD COMPANY

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

(a) The Wabash Railroad Company, hereinafter referred to as the Carrier, acted contrary to the intent of Article 8 (a) of the Agreement effective May 1, 1946, as revised effective September 1, 1949, when it failed and declined to compensate Train Dispatcher J. L. O'Connor by a determination of the daily rate of the position filled by multiplying the regular monthly rate by 12 and dividing the result by 261, in accordance with the provisions of Article 8 (a), for relief service performed in relieving the regularly appointed chief train dispatcher in its Moberly, Missouri, train dispatching office, on the specific dates herein specified:

January 24 and 31, February 7, 14, 21 and 28, March 7, 14, 21 and 28, April 4, 11 and 18, 1951.

(b) The Wabash Railroad Company shall now compensate Train Dispatcher J. L. O'Connor for the difference between what he did receive for service on the chief train dispatcher position on the above named specific dates, which compensation the Carrier incorrectly based on Article 8 (a) of the Agreement effective May 1, 1946, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 313, and the compensation to which the Claimant is entitled by the provisions of Article 8 (a) as revised effective September 1, 1949, providing for a determination of the daily rate by multiplying the monthly rate by 12 and dividing the result by 261.

EMPLOYES' STATEMENT OF FACTS: In the existing Agreement between the Wabash Railroad Company and the train dispatchers employed thereon represented by the American Train Dispatchers Association, effective May 1, 1946, and revisions thereof, all of which are on file with your Honorable Board and by this reference made a part thereof, the following rules are pertinent to adjudication of this dispute:

"ARTICLE 1—SCOPE: (Effective May 1, 1946)

"(a) This agreement shall govern the hours of service and working conditions of train dispatchers.

The above quoted rule, even when considered alone and without reference to the specific provisions of Article 1, paragraph (a), of the Agreement between the parties, obviously has no relationship to, or bearing upon, the rates of pay applicable to any individuals occupying positions of Chief Train Dispatcher. The provisions of that rule had no more application to the work performed by Mr. O'Connor on the dates in question than had he worked on those dates in some outside industry.

In paragraph (b) of the Association's ex-parte Statement of Claim, it is alleged:

> "(b) The Wabash Railroad Company shall now compensate Train Dispatcher J. L. O'Connor for the difference between what he did receive for service on the chief train dispatcher position on the above named specific dates, which compensation the Carrier incorrectly based on Article 8(a) of the Agreement effective May 1, 1946, * * *."

The compensation allowed Mr. O'Connor for work performed on the position of Chief Train Dispatcher on the dates in question was not based on Articles 8, paragraph (a), of the Agreement effective May 1, 1946. The position of Chief Train Dispatcher at Moberly is not subject to any of the rules of the Agreement between the parties. The rate paid to Mr. O'Connor for the service performed on those dates was a daily rate arrived at by dividing the annual salary applicable to positions of excepted Chief Train Dispatcher by the number of days the occupants of such positions are required to work in a calendar year.

The contentions of the Association are wholly without foundation under the rules of the Agreement between the parties and should be dismissed and the claim denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The effective Agreement between the parties was revised on September 1, 1949.

Claim is here made by J. L. O'Connor for the difference in pay that he received and the sum allegedly due him under Rule 8(a) of the Agreement. It is asserted that the daily rate of compensation should have been based upon 1/261 of the annual rate rather than 1/313, on dates when relief service was performed as Chief Train Dispatcher.

The Carrier asserts that Rule 1 (a) specifically exempts the position of Chief Train Dispatcher from the coverage of the Agreement and that this Board is without jurisdiction to determine the rate of pay for an "official position" and that the rates of pay designated in Rule 8 (a) are not applicable to individuals occupying the position of Chief Train Dispatcher.

It is true that the position of Chief Train Dispatcher is an "exempted position" in so far as Rule 1 (a) of the effective Agreement concerns the regular, duly designated (by the Carrier) holder of the position. This individual, once designated as the occupant of the postion by the Carrier may be removed by it at will, without regard to the effective Agreement. However, Article 3 (g) of said Agreement specifically places the function of relieving Chief Train Dispatchers within the scope of the duties of Train Dispatchers.

In short, the position of Chief Train Dispatcher, when occupied by the individual designated by the Carrier, is an "exempted position" but the duty of performing relief service has been contracted away. (Article 3 (g) thus

when the duties of the Chief Train Dispatcher are performed by a Train Dispatcher, neither the position, or the occupant are "exempt". Under these conditions each, or both, that is, the occupant and the position, come within the Scope of the Agreement properly compensable under Rule 8 (a) of the Agreement.

This Board held in Award 5371:

> "* * * * we have held in numerous awards that only the occupant of the position of Chief Train Dispatcher is excepted from the agreement and any employe relieving him for any cause would be entitled to the benefits of the agreement."

We find that under the facts existent herein, the "position", as such, comes within the Scope of Rule 1 (a).

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

The Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of of April, 1952.

DISSENT TO AWARD 5716, DOCKET TD-5738

The Scope Rule in this Agreement reads:

> "This agreement shall govern the hours of service and working conditions of train dispatchers.
>
> The term 'train dispatcher' as herein used shall include all train dispatchers, except one Chief Train Dispatcher on each operating division which position shall not be subject to any of the provisions of this agreement."

The Opinion correctly holds that the position of Chief Train Dispatcher is an "excepted position", but in the same breath holds that a train dispatcher, while occupying such position temporarily, is governed by the provisions of Rule 8 (a). Irrespective of previous awards under different agreements, the effective Agreement before us in the instant dispute does not warrant any such interpretation. Rule 8 (a) does nothing more than establish the rate of pay

of a train dispatcher and its application is co-extensive with the Scope of the Agreement. It is not applicable to the rate of pay of a Chief Train Dispatcher's position which is excepted from the Agreement by specific terms of the Scope Rule.

Article 3 (g) referred to does nothing more than grant train dispatchers the right to provide relief on Chief Train Dispatcher positions. Article 8 (a) sets forth the specific daily rate of pay for train dispatchers and does not mention or refer to the rate of pay for Chief Train Dispatchers' positions.

Under the Agreement here involved and the facts presented, there is no justification for holding that only the regular incumbent of a Chief Train Dispatcher's position is excepted and consequently the Award is in error.

/s/ A. H. Jones,

/s/ R. M. Butler,

/s/ W. H. Castle,

/s/ C. P. Dugan,

/s/ J. E. Kemp.