Award No. 5904
Docket No. TD 5836

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of F. A. Summerhays, that:

1. The Grand Trunk Western Railroad Company failed and refused to comply with the requirements of Articles 3 and 6 of the current Train Dispatchers' Agreement in determining the amount of compensation due Dispatcher F. A. Summerhays for service performed on the position of Chief Train Dispatcher on January 1-10-11-13-22 and 29, February 5-12-19-20 and 26, March 12-19-20 and 21, April 9-16 and 20, 1951.

2. The Grand Trunk Western Railroad Company shall now compensate Dispatcher F. A. Summerhays in an amount representing the difference between what he was paid and the amount he should have been paid, at the straight time daily rate established for the position of Chief Train Dispatcher, but computed in accordance with the requirements of Article 6(b) of the Agreement for each of the days specified in Paragraph 1 hereof except January 13, 1951 and, for January 13, 1951, at time and one-half the daily rate established for the position of Chief Train Dispatcher, computed in accordance with the requirements of Article 6(b) of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is effect an Agreement, dated and effective May 14, 1942, between the Grand Trunk Western Railroad Company and Their Employees Represented by American Train Dispatchers Association. On August 19, 1949, the parties to said Agreement entered into another Agreement, effective September 1, 1949, revising Articles 3 (a), 3 (b), 6 (a), 6 (b) and 6 (e) of the Agreement of May 14, 1942 (supra). Copies of both Agreements herein referred to are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein. They will hereafter be referred to as the Agreement.

For the ready reference of the Board, the rules of the Agreement pertinent to the instant case are quoted below:

"ARTICLE 1—Definition.

The term Train Dispatcher as hereinafter used shall be understood to include Trick, Relief and Extra Dispatchers only."

that Agreement supports the claim you present. The matter of rate of pay for the Chief Dispatcher, a non-schedule position, is determined by the Carrier alone, therefore, your claim in behalf of Mr. Summerhays for January 1st, 1951 and 17 subsequent dates, is declined.

Yours very truly,

/s/ C. A. Skog
Vice President and General Manager."

POSITION OF CARRIER: The position of Chief Dispatcher does not come under the Working Agreement in effect between the American Train Dispatchers Association and the Grand Trunk Western Railroad Company, and there is no rule contained therein as to the Chief Dispatcher rate of pay. The Association in submitting this claim to the Third Division, are, in effect, asking the Third Division to supply such a rule which, of course, the Third Division is not authorized to do. The Carrier has the arbitrary right to establish the rate for a Chief Dispatcher and to change such rate at will. Whether that rate was established on a monthly or on a daily basis or the method on which a daily rate is arrived at, is of no concern to the Association. Article 3 and 6 of the Working Agreement, cited by the Association, obviously refer only to rates of pay established for Train Dispatchers, not Chief Dispatchers. Needless to say, the Chief Dispatcher daily rate established by the Carrier is in excess of the Train Dispatcher rate established by Agreement between the Carrier and the Association.

This claim has been handled in the usual manner up to and including the highest designated officer of the Carrier and, in the absence of a supporting rule in the Working Agreement, has been declined. All data contained herein has, in substance, heretofore been submitted to the Association.

OPINION OF BOARD: The issue dividing the parties in this case is clear. Is there any provision in the Carrier's Agreement with the Organization which requires that a Dispatcher, when he relieves a Chief Dispatcher, shall be paid a daily rate calculated in accordance with the agreed on formula for computing a Dispatcher's daily rate, rather than on the basis used by the Carrier in this case? In other words, granted the propriety of applying the Chief Dispatcher's **monthly** rate of pay to a Dispatcher who relieves him, should such monthly rate, after being multiplied by twelve in order to get an annual rate, be divided by two hundred and sixty-one days, as provided for Dispatchers in Article 6 (b) of the effective Agreement, or by three hundred and thirteen days as the Carrier does for Chief Dispatchers, and did in this case for the Relief Dispatcher?

The Carrier contends that—(1)—the position of Chief Dispatcher and the rate of pay therefor, is completely excluded from the Agreement covering Dispatchers;—(2)—the Carrier has the right unilaterally to set a Chief Dispatcher's rate;—(3)—the daily rate of such position is determined as set forth above;—(4)—this daily rate is therefore the one properly applicable, under the Agreement, to a Dispatcher who relieves the Chief Dispatcher;—(5)—Article 6 (b) of the Agreement deals with computing Disptachers' and not Chief Dispatcher's daily rates, and therefore is not effective in the instant case;—(6)—most of the Awards cited by the Organization in support of its position involve Agreements with other Carriers in which only one Chief Dispatcher is excepted from the Dispatchers' Agreements; and—(7)—Award 5371 involving the same Carrier and Organization is not controlling because, while sustaining the claim for time and one-half rather than pro rata pay for a Dispatcher who relieved a Chief Dispatcher, this Award was silent on which rate of pay the time and one-half should be applied to.

The Organization contends that Article 6 (b) controls a Dispatcher's rate not only when he fills a Dispatcher's position, but also when he relieves in a Chief Dispatcher's position.

Thus the issue stated above comes down to this: When a Dispatcher fills a Chief Dispatcher's position, does the Agreement by which the former is covered follow him into a position excluded from the Agreement? Award 5371 answers "yes", so far as time and one-half rates for rest day work in relief of a Chief Dispatcher's position is concerned. And we reaffirm our ruling in that case. But does the same conclusion apply also to the daily rate at which such a Relief Dispatcher is paid?

The Carrier suggests that if we answer this question affirmatively, it can easily nullify the effect of our ruling because of its unilateral control over Chief Dispatchers' rates of pay. This may well be. But we do not think that our decision should be influenced by this possibility. Our task here is solely to interpret the Agreement in the light of this case's facts.

It might also be asserted that to rule in favor of the instant Claimant would be inequitable for both the Carrier and its Chief Dispatchers, inasmuch as a Relief Dispatcher would be given a much higher daily rate than the man he relieves. This possibility is also not controlling. As we have often stated, it is the Agreement, rather than equities or inequities that must guide us; and the latter are properly to be resolved by collective bargaining between the parties.

Having ruled that the Agreement is controlling, we must look at the pertinent provision, the second sentence in Article 6 (b):

> "To determine the daily rate, multiply the monthly rate by 12 and divide the result by 261."

Clearly, our decision must turn on an interpretation of "the daily rate" and "the monthly rate". Whose daily rate? And whose monthly rate?

We think that without question "the daily rate" referred to is that of a Train Dispatcher covered by the Agreement. And the Agreement makes no exception of Train Dispatchers who relieve in Chief Dispatchers' positions, whether the latter are covered by the Agreement or not. We think next that "the monthly rate" referred to is that of the position to be filled by a Dispatcher. True, Article 6 (a) sets forth the rate to be paid Dispatchers for their own work; and when a Dispatcher fills a Dispatcher's position, Article 6 (b) applies to the monthly rate specified in 6 (a). But when a Dispatcher fills a Chief Dispatcher's position, the latter's monthly rate is properly applicable to the Relief Dispatcher. And in such case, we think, Article 6 (b) must be applied to the Chief's rate.

We rule, then, that in respect to the daily rate to be paid a Relief Dispatcher filling a Chief Dispatcher's position the Agreement covering a Dispatcher follows him into the higher position.

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 Carrier failed to comply with the relevant provisions of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois this 7th day of August, 1952.

DISSENT TO AWARD NO. 5904, DOCKET NO. TD-5836

The Scope Rule in the Agreement before us reads:

"The term Train Dispatcher as hereinafter used shall be understood to include Trick, Relief and Extra Dispatchers only."

The Opinion correctly holds that the position of Chief Dispatcher is excluded from the Agreement.

The error in this award is the result of reasoning based on the following incorrect premise stated in the Opinion:

"And the Agreement makes no exception of Train Dispatchers who relieve in Chief Dispatchers' positions, whether the latter are covered by the Agreement or not."

This is directly contrary to basic, elemental principles and to basic awards of this Board which have stated time and again:

"* * * We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employes by the agreement."

It **was not** necessary for the Carrier to make the "exception". It **was** necessary for the Employes to make the "inclusion" if such were the intent.

This award is in error.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan