

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
FORT WORTH AND DENVER RAILWAY COMPANY
THE WICHITA VALLEY RAILWAY COMPANY

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

(a) Management of Fort Worth and Denver Railway Company; The Wichita Valley Railway Company, hereinafter referred to as the Carrier, failed and refused to properly compensate Train Dispatchers J. H. Lowder and W. J. Hamilton of the Wichita Falls, Texas office for service performed on the dates set forth in the Statement of Facts hereof, when on such dates Train Dispatchers Lowder and Hamilton were required to perform duties of night chief train dispatcher at the trick dispatcher rate of pay, which is lower than the rate of pay of night chief dispatcher.

(b) The Carrier named in above paragraph (a) shall now compensate said Train Dispatchers Lowder and Hamilton for the difference in what they were paid and what they would have received if they had been paid at rate of night chief dispatcher for each of the dates on which claim is made.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the Fort Worth and Denver Railway Company—The Wichita Valley Railway Company and the American Train Dispatchers Association, effective May 1, 1950, covering hours of service and working conditions governing train dispatchers. Said Agreement is on file with your Honorable Board and is by this reference made a part of this submission as though fully incorporated herein. The Rules of said Agreement pertinent to the instant claim read as follows:

"Rule 1. Scope. 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 in each dispatching office.

"A Chief Dispatcher who is regularly assigned to a shift performing train dispatcher work will be regarded as within the rules of this agreement."

There is one example where a claim was made on June 27, 1951 because the second trick dispatcher issued instructions to place some grain cars at Barwise. These instructions were unnecessary because the Chief Dispatcher had issued similar instructions at 4:15 P.M. on June 27, 1951, and a copy of his message was on the second trick train dispatcher's (claimant's) desk when he sent the second instructions at 9:41 P.M. This was also only 19 minutes before the Night Chief Dispatcher came on duty, and even if it had been necessary to send this message, there was no hurry, for train No. 176 was not due at Barwise for several hours.

These claims are replete with instances where the instructions contained in the Chief Dispatcher's line-up were merely repeated and later cited as a basis for claim. The rest of the items of work are plainly those performed by trick train dispatchers with regularity at other times without complaint. As a matter of fact, in conference General Chairman W. J. Hamilton very frankly admitted the claims were made simply because the work was done between the hours of 5:00 P.M. and 10:00 P.M. when there was no chief dispatcher or night chief on duty. It was further admitted the same work is regularly performed during on-duty hours of the chief dispatcher or night chief, and no claims emanate from such performance.

In conclusion the Carrier restates its position as follows:

1. Rule 2 of the agreement between the parties, and the side agreement to interpret this rule as is done on the Chicago, Burlington & Quincy Railroad, permits working a trick train dispatcher without immediate supervision present.
2. Practice on the property and on other carriers having identical rules supports the manner in which claimants have been paid for the work performed.
3. The facts show that none of the items of work set forth in Carrier's Exhibit No. 1 constitute duties of the Night Chief Dispatcher as set forth in Rule 3, but are within the definition of a trick train dispatcher as shown in Rule 2.

The claim for Night Chief Dispatcher's rate of pay is utterly devoid of support, contractually or otherwise, and it must be denied.

* * * * *

The Carrier affirmatively states that all data herein and herewith submitted has previously been submitted to the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: On November 9, 1950, the Carrier established at Wichita Falls, the position of Night Chief Dispatcher. Thereafter, a Chief Dispatcher was employed at said office from 8:00 A.M. to 5:00 P.M. and a Night Chief Dispatcher from 10:00 P.M. to 7:00 A.M.

Between June 15, 1951, and January 9, 1952, the Claimant Lowder worked 26 days and the Claimant Hamilton 106 days between the hours of 3:30 P.M. and 11:30 P.M. as Trick Train Dispatchers at Wichita Falls. From 5:00 P.M. to 10:00 P.M. on the days that the Claimants worked there was no Chief Dispatcher or Night Chief Dispatcher on duty. The Claimants ask that they be additionally compensated for the difference between what they received as Trick Train Dispatchers and what they would have received if they had been paid at Night Chief Dispatcher's rate on the theory that they performed the duties of Night Chiefs and are entitled to be compensated as such.

The respective duties of Trick Train Dispatchers and Other Than Trick Train Dispatchers (Night Chief Dispatchers in this instance) are defined in the Agreement as follows:

"Rule 2. Definition of Trick Train Dispatcher. This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work."

"Rule 3. Definition of Other Than Trick Train Dispatcher. This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains, the distribution of power and equipment incident thereto; and to perform related work."

The theory of the Claimants is that they performed Night Chief Dispatcher's work—not that the Carrier was obligated to employ a Night Chief Dispatcher at all times when the Chief Dispatcher was not on duty.

The outstanding distinction between the positions of Trick Train Dispatchers and Night Chief Dispatchers appears to be that the latter have supervisory jurisdiction over other Dispatchers. What supervisory authority the Claimants exercised when no Night Chief Dispatcher was working with them is not clear. The Employees have caused to be set out in the record copies of some 230 instructions issued by the Claimants over the signature or initials of the Chief Dispatcher during the periods when no Night Chief was on duty, but we find nothing in these instructions to indicate that they would have been issued by the Night Chief if he had been on duty or that they would not have been issued by the Claimants if a Night Chief had been on duty.

It also appears that at the time or shortly after Rules 2 and 3 were negotiated the contracting parties agreed that Rule 2 should be applied by them in the same manner that a like rule had theretofore been applied on the Chicago, Burlington and Quincy Railroad. The only showing as to the practices on the C. B. & Q. in that regard is a letter to the Carrier's General Manager from the C. B. & Q.'s Assistant to Vice President Labor Relations, under date of November 19, 1951, in which it is stated that that railroad then had fifteen (15) dispatching offices, in eleven of which trick train dispatchers worked some portion of the day without direct supervision. It is sufficient to say that this showing is not calculated to support the claim.

The case before us is quite unlike that considered and resolved in Award No. 1828, relied on by the Employees. That case involved the abolition of the position of Night Chief Dispatcher and the assignment of a substantial portion of his duties to an employee not covered by the Dispatchers' Agreement. We find nothing helpful in that Award, other than some dicta of doubtful application here.

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 facts disclosed by the record do not establish a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1953.