

Award No. 6581
Docket No. TD-6547

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
BOSTON AND MAINE RAILROAD**

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

(1) The Boston & Maine Railroad Company, hereinafter referred to as "the Carrier," shall compensate all train dispatchers who, since June 4, 1951, and to the date of decision of this dispute, have performed relief service in positions of chief train dispatcher, amounts representing the difference between what they were paid and what they would have received if their compensation for such service had been computed in accordance with the provisions of Section (a) of Article 3, of the controlling agreement between the parties to this dispute, and

(2) The Carrier shall, on and after the effective date of the decision of this dispute, compensate train dispatchers in accordance with the provisions of Section (a), Article 3, of the currently effective agreement, whenever they perform relief service in positions of chief train dispatcher.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the American Train Dispatchers Association and the Boston and Maine Railroad Company, hereinafter referred to as the carrier, effective May 1, 1950, covering hours of service and working conditions governing train dispatchers. A copy of this agreement is on file with your Honorable Board and is by this reference made a part of this submission as though fully incorporated herein.

For ready reference of the Board the rules of said agreement relevant to the instant claim and upon which the petitioner places particular reliance are quoted below:

Article 1 (a) Scope

"The term 'train dispatcher' as hereinafter used shall be understood to include Assistant Chief Dispatchers, Trick Dispatchers, Relief Dispatchers, and Extra Dispatchers, as these terms are defined in Section (b) of this Article."

Article 3 (a)

"Train dispatchers shall be monthly rated employees, but their compensation shall be computed on a daily basis. To determine

daily rate, multiply the monthly rate by 12 and divide by 261. To determine the straight time hourly rate divide the monthly rate by 174."

On this Carrier when a Trick or Assistant Chief Dispatcher is used on a daily basis in place of a Chief Dispatcher, the man used is paid the daily rate of an Assistant Chief Dispatcher since this is higher than the daily rate of a Chief Dispatcher. The daily rate so paid is computed as required by Section (a) of Article 3. There is nothing in the Statement of Claim to indicate when, if ever, the Carrier neglected to pay as herein stated. If, at some time, any Dispatcher was paid less than the Assistant Chief's daily rate, the error would have been corrected as soon as it was called to the attention of the proper officer of the Carrier. We do not believe we could require a Dispatcher to work as a Chief Dispatcher at a daily rate lower than the daily rate of an Assistant Chief.

Therefore, there is no justification for an affirmative award.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this docket has been simplified by the parties tying their positions to two or three recent awards of this board. It is fair to say that it is joined on the statement appearing in a dissent of the Carrier Members to Award No. 6292 said statement reading as follows: "* * * when the carrier elected to use a Train Dispatcher to afford relief on the position of Chief Train Dispatcher, such Train Dispatcher, during the period of filling the position of Chief Dispatcher, passed completely from under the control of the Agreement between this Carrier and the American Train Dispatchers Association."

The Employees' contention in the instant case is "that a Train Dispatcher or Assistant Chief Dispatcher, when required to fill a position outside the scope of the Agreement, loses none of the benefits or protection afforded by the Train Dispatchers' Agreement."

Both parties seem to agree that Award No. 5904 represents the present rule of the Board in these cases. The Carrier states: "It is clear that while there might be some basis for applying the train dispatcher's ratio in Award 5904, there is no basis for applying that ratio in the instant case."

The Carrier seeks to make a point of the fact that the rules of the Carrier in this case are not the same as they were in Award No. 5904, but insofar as they relate to the basic issue (as framed by the Carrier Members of the Board in their dissent quoted above) in this series of awards, it could probably be said that were other minor differences in the rules involved in all the awards. The Carrier's position has been consistently the same in substance.

No good purpose would be served by attempting to elaborate what has been said in the numerous sustaining awards on this issue.

The referee has been furnished with a copy of a circular letter No. 2346, dated March 11, 1954, issued by the Bureau of Information of the Eastern Railways, concerning the status of the litigation on Award No. 5904 from which he quotes the concluding paragraph.

"The parties argued the respective motions in Chicago, Illinois, on January 20, 1954, before District Judge Walter J. LaBuy, who took the motions under advisement. A decision thereon is not expected for several months. In the meantime, the organization has continued its agreement not to strike because of the Carrier's refusal to apply Award No. 5904."

The net effect of this arrangement is to leave us free to proceed with an award in the instant case, and on the basis of what has already been said the claim is sustained.

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 properly comply with the provision of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.

DISSENT TO AWARD 6581, DOCKET TD-6547

The Award herein is not based upon the merits of this particular case but it applies the decision in Award 5904 notwithstanding that admittedly differences exist between the rules of the applicable Agreements. Accordingly, the instant Award disregards a well established principle followed by this Division in numerous Awards and which the same Referee as in the instant case stated as follows in Awards 1875 and 1885:

Award 1875. "It is our duty to pass on the meaning of words, phrases, and sentences as we find them."

Award 1885. "The function of this Board is limited to interpreting and applying the rules agreed upon by the parties."

For the foregoing reasons, and for reasons cited in the dissents to Awards 5904 and 6292, which dissents are made a part hereof by reference, the instant Award is in error and we dissent.

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