

**Award No. 6799**

**Docket No. TD-6650**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Francis J. Robertson, Referee**

---

**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(a) The Chicago and North Western Railway Company, hereinafter referred to as "the Carrier," violated and continues to violate Rules 1, 2(b), (f) and (g) of the currently effective agreement between the parties to this dispute when, beginning January 1, 1953, it abolished a train dispatching position in its Huron, S. D. train dispatching office designated as Position 6-76 and transferred work of that position to a class of employees not covered by the train dispatchers' agreement.

(b) The Carrier shall now restore to train dispatchers covered by the agreement between the parties, such work as it had removed from the assignment of Position 6-76, and beginning January 1, 1953 and continuing until such work is restored to train dispatchers covered thereby, compensate Train Dispatcher M. B. Stelow on the Huron, S. D. office, and any other train dispatcher adversely affected by the above cited violation, the difference between what they earned in other employment with the Carrier and the trick train dispatcher rate to which they are entitled for each day on which they were deprived of the work previously assigned to Position 6-76 and which the Carrier assigned to employees not covered by the agreement.

**EMPLOYEES' STATEMENT OF FACTS:** There is an agreement between the parties, bearing the effective date of September 16, 1950. A copy thereof is on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

For ready reference and convenience of the Board, Rule 1, SCOPE, and Rules 2 (b), (f) and (g) are quoted below:

"SCOPE 1. The term 'train dispatcher' as used in this agreement shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office, who will not be required to perform trick train dispatcher's duties."

The employees do not challenge the Carrier's right to abolish positions when the work of such position or positions are no longer needed. However, they do challenge the right of the Carrier to turn any part of the work of one or more train dispatcher positions over to employees not covered by the agreement, under the guise of abolishing a position, merely for the purpose of effecting the performance of such duties by a lower rated employee.

The Carrier has done just that. It is a clear violation of the agreement and we pray your Honorable Board to so hold.

**CARRIER'S STATEMENT OF FACTS:** Prior to or about January 1, 1953 the work of distributing cars on the Dakota Division was handled by train dispatchers. In order to concentrate car distribution work and permit train dispatchers to devote their full time to train dispatching work, position of telegrapher car distributor was established effective January 1, 1953 and with reassignment of train dispatching work, one train dispatcher's position was abolished. Representatives of the American Train Dispatchers Association filed claim for and in behalf of M. B. Stelow for differential between what he would have earned as a train dispatcher and what he did earn from the carrier in other employment, contending that the concentration of car distributing work resulting in the establishment of telegrapher car distributor position was a violation of rule 2 (b), current train dispatchers' agreement, effective September 16, 1950, reading:

**"DEFINITION OF TRICK TRAIN DISPATCHERS' POSITIONS.**

(b) 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.'

**POSITION OF CARRIER:** It is the position of the carrier that the work of car distribution is not work which must under the provisions of rule 2 (b) quoted in carrier's Statement of Facts, be assigned only to the class of train dispatchers. It is a well known fact that train dispatchers in many instances do perform a certain amount of telegraphy not incidental to train dispatching when their duties in connection with train dispatching permit. It is also a well known fact that when such duties in a given office increase to the extent a train dispatcher can no longer perform these duties and properly dispatch trains, positions of telegraphers, commonly referred to as "side-table telegraphers" are established and train dispatchers relieved of such telegraph work. In no instance of record prior to the instant claim have the train dispatchers on this property argued that such telegraph work belonged to them solely and if a position were established to perform exclusively such work, a train dispatcher must be assigned thereto. It is the position of the carrier that the establishment of a telegrapher car distributor position did not violate any agreement between the carrier and the American Train Dispatchers Association and that the claim as here presented to this Board, not being supported by schedule rules agreement or otherwise, cannot properly be sustained.

All data in support of the carrier's position has been previously presented to the employees and is made a part of the particular question here in dispute. (Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier abolished a dispatcher's position and established a Car Distributor position of Telegrapher-Clerk at its Huron office. Complaint is made by the Employees because of the assignment of the car distribution work formerly performed on the abolished position to a position not covered by the Dispatchers' Agreement.

It is argued by the Carrier that we cannot proceed to a determination of this claim on the merits because no notice has been given to other "employees involved."

The disposition of the instant dispute clearly turns upon the resolution of the question of whether or not, car distribution work falls within the scope of the Dispatchers' Agreement. In support of their version of the claim, the Employees have laid considerable stress upon the handling of the car distribution work at the Huron office asserting that it has been traditionally performed by dispatchers at that point. Nowhere, however, have they refuted the Carrier's assertion that at other points on the system that same work is also performed by employees represented by and covered by collective bargaining agreements with the Brotherhood of Railway and Steamship Clerks, and the Order of Railroad Telegraphers. It is, therefore, apparent that there are "other employees" involved in this situation.

The question of notice under Article 3 First (j) of the Railway Labor Act is not a novel one to this Referee. There have been no developments in the law since our decision in Awards Nos. 5599 and 5600 which would warrant any disposition of this claim other than that made of the claims involved in those Awards. Accordingly, the claim will be dismissed without prejudice.

**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

The claim should be dismissed without prejudice for the reasons set forth in the foregoing "Opinion of Board."

#### AWARD

Claim dismissed without prejudice in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

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