

Award No. 6801
Docket No. TD-6689

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY

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

(a) The New York, Chicago and St. Louis Railroad Company, hereinafter referred to as "the Carrier," shall pay to all train dispatchers who, since August 18, 1952, and to the date of decision of this dispute, have performed relief service in positions of chief train dispatcher, such amounts as represent the difference between what they were paid and what they would have received if the Carrier had compensated them at the chief train dispatchers' straight time daily rate computed in accordance with the provisions of Section (a) of Article 7 of the currently effective agreement, and

(b) The Carrier shall, on and after the effective date of the decision of this dispute, compensate train dispatchers at the rate of the chief train dispatchers' position, and in accordance with the provisions of Section (a) of Article 7 of the currently effective agreement, whenever they perform relief service in positions of chief train dispatcher.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between The New York, Chicago and St. Louis Railroad Company and its Train Dispatchers, on the Nickel Plate District, Lake Erie and Western District, and Clover Leaf District, represented by the American Train Dispatchers Association, effective August 1, 1951, 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 Petitioner places particular reliance are quoted below:

"ARTICLE 1 (a)—SCOPE

"The rules of this agreement shall govern the hours of service, compensation and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used shall include assistant chief, night clerk, trick, relief, and extra train dispatchers.

"Please advise if you will comply with above request and in view of the long time that this matter has been pending an early reply will be appreciated."

It is clear from the above that mutual understanding was reached between the Carrier and the American Train Dispatchers in October, 1949, that a Train Dispatcher performing relief service on the relief days of Chief Train Dispatcher would be compensated at the daily rate of an Assistant Chief Train Dispatcher.

It is equally clear from the letter dated February 18, 1953, from General Chairman Sheak that "the members on the Nickel Plate wish to change that arrangement so that payment will be made in accordance with former General Chairman Parrett's request of August 18, 1952." (Underscoring supplied.)

It is submitted that the agreement can only be changed by proper negotiations between the parties on the property and not by the method being followed by the organization in this case to the Board.

There is absolutely no obligation under the basic schedule to fill the position of Chief Train Dispatchers when they are absent from duty, but when the Carrier elects to do so, under the terms of the understanding reached in October, 1949, it may assign a Train Dispatcher to perform service during such absence at the Assistant Chief Dispatcher's daily rate, computed in accordance with Article 7(a).

Following the completion of this arrangement on the Nickel Plate, Lake Erie and Western and Clover Leaf Districts of the Nickel Plate, a similar situation arose on the Wheeling and Lake Erie District of this Carrier under another agreement with the same organization (General Chairman Lee), and was handled in the same manner so as to provide that when it is necessary to furnish relief for the Chief Train Dispatcher, party relieving such position will receive the same rate as paid the Assistant Chief Train Dispatcher, thus making the arrangement uniform over the entire system.

In handling this dispute on the property, the American Train Dispatchers Association called attention to Award 5829 as supporting their position. In that award an entirely different situation prevailed. The Carrier had contracted that relief of excepted Chief Train Dispatchers should be made by qualified Train Dispatchers. In the instant case the positions of Chief Train Dispatchers are excluded from the scope of the agreement and the Carrier has not contracted for the relief of such positions except to the extent of the understanding of October, 1949, which provides the rate to be paid if the Carrier deems such relief is necessary and if it elects to use a Train Dispatcher to relieve the position.

The Carrier has shown that the compensation paid to Train Dispatchers relieving Chief Train Dispatchers is strictly in accordance with an understanding reached with the American Train Dispatchers Association in October, 1949, which provides for the payment, in such instances, of the Assistant Chief Train Dispatcher's daily rate "determined by multiplying the monthly rate by 12 and dividing the result by 261" (Rule 7(a)). The claim, therefore, should be denied.

All data submitted in support of Carrier's position have been presented to the other party and made a part of this particular question.

OPINION OF BOARD: Carrier has been paying dispatchers who work the desk of the Chief Dispatcher on the relief day of his position at the Assistant Chief Dispatcher's rate arriving at the daily rate by multiplying the latter monthly rate by 12 and dividing by 261 as provided by Article 7(a) of the applicable Agreement. Employees claim pay at the Chief Dispatcher's rate computed by application of the same formula.

On this property it appears that prior to September 1, 1949, (the date of the inauguration of the 40-hour week) it had been customary to pay employees relieving Chief Train Dispatchers at the calendar day fraction of the Chief Dispatcher's monthly rate or their new rate whichever was higher. At that time the formula for computation of the Train Dispatcher's daily rate was $1/313$ of the monthly rate multiplied by 12. It appears that a conference was held with the General Chairman and Carrier Officials to discuss the effect of the 40-hour week on that method of computation of pay of the relief man. As a result of that conference Carrier Officials wrote a letter dated Oct. 28, 1949, in which it was stated that it was the Carrier's intention to compensate the men working the desk in the absence of the Chief Dispatcher on the days the Chief Dispatcher is off at the Assistant Chief Dispatcher's rate based on five days a week. Carrier asserts that that letter was written in confirmation of Agreement reached at the conference. That it was a confirmatory letter is evidenced by the fact that the individual who was serving as General Chairman corroborates Carrier's version of the letter and by the further fact that the arrangement was put into effect about November 1, 1949, and continued in effect without protest until August 18, 1952.

The circumstances leading up to the letter of Oct. 28, 1949, and events following its writing point to the conclusion that it was evidentiary of a mutual understanding or agreement. Effective August 1, 1951, the collective bargaining agreement between the parties was revised and signed by the same individual as General Chairman who was in office in 1949. The understanding evidenced by the Oct. 28 letter was not repudiated at that time. There is nothing in the new collective bargaining agreement repugnant to or inconsistent with the earlier understanding. Under well-accepted precepts of contract construction we can only conclude that the Oct. 28, 1949, understanding is a valid subsisting agreement changeable only by negotiation and not by Award of this Board.

The Employees have placed considerable reliance on Award 5904 as supporting their position in the instant dispute. We have no quarrel with the result reached in that Award. The issues and facts in that docket were inapposite to those herein presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate 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 27th day of October, 1954.

**SPECIAL CONCURRING OPINION IN AWARD NO. 6801,
DOCKET TD-6689**

We concur only in the result reached in this Award and register our specific disagreement with the dictum that we have no quarrel with the result reached in Award 5904.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ J. E. Kemp

/s/ C. P. Dugan