# Award No. 6810
# Docket No. TD-6585

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Francis J. Robertson, Referee**

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION
## GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Gulf, Mobile & Ohio Railroad Company, hereinafter referred to as "the Carrier," incorrectly applied and continues to incorrectly apply the provisions (where applicable) of the second paragraph of Article 7-(a) as revised September 1, 1949, when the Carrier failed and continues to fail to compensate in accordance therewith such employes who are fully covered thereby, for rest day relief service, vacation relief service, and other relief service on positions of day chief, night chief, or assistant chief dispatchers.

(2) The Carrier shall pay to the employes, who since September 1, 1952, performed such relief service, such sums as represent the difference between what they were paid therefor and what they would have received if their compensation for that service had been calculated in accordance with said Article 7-(a).

(3) The Carrier shall also thereafter compensate in accordance with the above mentioned rule of the Agreement, all employes subject thereto who are used to perform any and all such relief service.

**EMPLOYES' STATEMENT OF FACTS:** An agreement governing the hours of service and working conditions of train dispatchers, between the parties to this dispute, revised effective September 1, 1949, is in effect. A copy thereof is on file with your Honorable Board and is, by this reference made a part of this submission as though fully incorporated herein. The scope of said agreement and the rules pertinent to the instant dispute reads as follows:

"ARTICLE 1 (a) SCOPE:

"The term 'train dispatcher', as used herein, shall include trick, relief, and extra train dispatchers. Day chief, night chief, and assistant chief train dispatchers who are not required to perform trick train dispatchers' duties, are not included within the scope of this agreement.

**OPINION OF BOARD:** The issue involved herein is the proper method of computing the compensation of employes performing relief service on positions of day chief, night chief or assistant chief dispatchers. Apparently Carrier has been paying employes who relieve day chief, night chief and assistant chief train dispatchers at the daily rate of a trick train dispatcher computed by multiplying the daily monthly rate by 12 and dividing by 261.

The Carrier apparently has been paying such employes at that rate under its concept of Article 3 (c) entitled "Relief Service"; which in pertinent part provides as follows:

> "When relief requirements regularly necessitate four or more days of relief service per week, relief dispatchers shall be employed and regularly assigned and paid at the rate applicable to the position worked. When not engaged in train dispatching service, they shall be assigned to such other service as may be directed by the proper officer and shall be paid for such service at the rate applicable to trick train dispatchers."

There is no doubt in our minds that the Carrier has a mistaken concept with respect to the applicability of that Article in this situation. An employe relieving a day chief, night chief or assistant chief is engaged in dispatching service. It follows that the second sentence in Article 3 (c) does not furnish the key for determination of the relief man's compensation when so used. Nor, does the Memorandum of Understanding of July 1, 1948 (also cited by the Carrier in support of its position) have any bearing on the question because it deals with setting a rate when the duties and responsibilities of chief train dispatcher, night chief or assistant chief are added to a trick train dispatcher's position, not with the rate to be paid when relieving on a Chief Dispatcher's position for which the rate had already been established.

On the record presented herein we can only say that the Carrier's method of compensating employes relieving day chief, night chief or assistant chief dispatchers is wrong. The compensation to be paid such employes clearly must be geared to the rate of the position relieved. How the daily rate should be computed is difficult of ascertainment for the reason that we are not informed as to what divisions of the Carrier are involved in this claim and it is clear that differing formulas may be required to determine the correct method of computing the daily rate on different divisions.

On the Eastern and Western Division of this Carrier the method of arriving at the daily rate payable to dispatchers relieving chiefs and assistant chief dispatchers would be dependent upon the effect to be given a provision of the Agreement which states it is not the intent of the Agreement to change practices on the Eastern and Western Division (former Alton) as outlined in a letter dated November 1, 1935 and addressed to Division Superintendents by the Vice President of the then Alton. In that letter it is stated that the Carrier would continue the practice of using qualified dispatchers in their district to relieve chief dispatchers and assistant chief dispatchers on their rest days and vacation periods, and they would be paid the regular rate of pay on the position worked.

Dispatchers on the other divisions of the Carrier apparently are not affected by the 1935 letter. On the Alabama, Tennessee, Louisiana and Southern Divisions, the application and effective date of the 40-Hour Week Agreement are held in abeyance by a special agreement and admittedly that affects the method of computation.

We are not clearly informed as to what the practice had been on the Alton in 1935 with respect to computation of the daily rate for dispatchers relieving Chiefs and Assistant Chiefs. While the employes assert that the 313 divisor then provided in Rule 7 (a) was used in 1935 on the Alton, their concept of a 313 divisor is shrouded in mystery for they also assert that now that is the applicable divisor on the Alabama, Tennessee, Louisiana and Southern Divisions. Yet in the docket on which Award No. 6377 is based,

the employes filed claim on the basis of a monthly divisor which fluctuated each month in accordance with the number of working days for a Chief or Assistant Chief in a given month. Their claim in that docket was sustained. That case arose on the Southern Division. There is nothing further in the record which enables us to resolve the difficulties which we face in reaching a decision on this claim.

From the above, it is apparent that we can do nothing but remand this claim to the property in the hope that the parties will negotiate and resolve the question. If they fail to do so the matter may be re-submitted to this Board on a record which covers the points which we have indicated require clarification.

**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 claim should be remanded to the property for the reasons indicated in Opinion of Board.

AWARD

Claim remanded as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1954.