

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LEHIGH VALLEY RAILROAD COMPANY

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

(a) The Lehigh Valley Railroad Company, hereinafter referred to as "the Carrier," acted contrary to and in disregard of the provisions of the agreement between the parties, particularly Article 3 (e) and (f), and Article 5 (e) and (f), when on August 13, September 24, October 1, 8, 15, 22, 29, November 3, 5 and 19, 1953, it used an extra train dispatcher junior to L. E. Arnold to perform service as assistant chief dispatcher in its Jersey City dispatching office.

(b) The Lehigh Valley Railroad Company shall now be required to compensate said Arnold the daily rate of assistant chief dispatcher for each of the days mentioned in paragraph (a) hereof, less any amount earned by him on said days for service performed on his regular assignments as towerman; and that he be similarly compensated for any days subsequent to November 19, 1953, on which Carrier permitted any junior train dispatcher to perform similar service.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the Lehigh Valley Railroad Company and train dispatchers represented by the American Train Dispatchers Association covering Rates of Pay, Rules and Working Conditions, effective September 1, 1949. A copy of this agreement is on file with your Honorable Board and by this reference is made a part of this submission as though fully set out herein.

For convenience of the Board the rules pertinent to this dispute are quoted as follows:

"Article 1 (a). The provisions of this agreement shall apply to Assistant Chief, Trick, Relief and Extra Dispatchers, and the term 'Train Dispatcher,' as hereinafter used, shall include incumbents of all positions referred to herein."

"Article 3 (e). **EXTRA WORK:** Relief requirements regularly less than four days per week shall be performed by extra dispatchers

to be called as the work to fill the vacancy belonged to the senior extra qualified dispatcher, who was Mr. Kresge and not the claimant, Mr. Arnold.

Precedent of claims arising incident to senior extra train dispatcher not being used to fill vacancies which were previously considered by this Division and sustained for only the senior extra dispatcher are Third Division Awards 2942, 4150, 4263, 5003 and 5899. Similarly, as in those awards, this Carrier did reimburse the senior extra train dispatcher who was not used on the dates involved in this claim, and cannot be required to pay others who had no entitlement under the rules to be used.

The employees in Part (a) of the claim refer to this claim being in part a disregard of the provisions of Article 3 (f) of the Train Dispatchers' Agreement. Article 3 (f) relates to vacations. The Board disposed of the question of vacation credits in Award 2942 when it stated: "It is not contemplated, however, that vacation credits shall be allowed for other than service actually rendered. Penalty payments for dates not actually worked do not require the allowance of vacation credits."

Also, the Petitioner in Part (a) of this claim relies in part on an alleged violation of Article 5 (f) of the schedule agreement. Article 5 (f) concerns "waiving of rights." There was no question involved in any instance of the dates here involved of waiving of rights to any position by any train dispatcher. Therefore, this rule of the schedule agreement is not at all relevant in the instant claim.

There is no rule of the schedule agreement requiring multiple payments being made to train dispatchers when the senior available extra train dispatcher is not used. Therefore, there is no merit to this claim, and the claim is not supported by any rule of the agreement or practice otherwise.

It is respectfully submitted that this claim, not being supported by the provisions of agreement rules that are applicable, and on the basis of the facts and evidence as herein presented, the Board cannot consistently do otherwise than deny this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: A careful study of this record fails to reveal the status of Employee P. E. Kresge with relation to the claim filed. The dispute arises as to the Carrier's obligations when it fails to call and use the senior extra man.

On behalf of Carrier it is contended that undoubtedly Employee Kresge filed a claim, (he being the senior employee involved) and the same was paid. The record fails to reveal that important fact by any substantial evidence. In other words, it is merely a supposition. Therefore, we conclude that in either rendering a sustaining or a denial award it would be necessary to arrive at such a decision by surmise or some method of deduction and by determining the same to be a fact when the record does not show this to be a fact. This would not be a proper function for this Board and therefore will be given no consideration.

This claim will be remanded for proper development of the facts which gave rise to this controversy.

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 claim is remanded in accordance with Opinion.

AWARD

Claim remanded in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.