

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

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 and Ohio Railroad Company, hereinafter referred to as "the Carrier," failed and continues to fail to properly compensate such employes as have been and are being used to relieve day chief, night chief, and assistant chief train dispatchers in its train dispatcher offices at Jackson, Tennessee, Murphysboro, Illinois, Kansas City, Missouri, and Bloomington, Illinois, when it failed and continues to fail to pay them at the rate of the position relieved, and in accordance with the provisions of the second paragraph of Article 7 (a) of the controlling Agreement.

(2) The Carrier shall (a) 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 been paid if their compensation for that service had been at rate of position relieved and calculated in accordance with the applicable rules of the Agreement between the parties, and (b) the Carrier shall compensate in the manner stated in (a) hereof all those who hereafter are used to perform such service.

EMPLOYES' STATEMENT OF FACTS: This matter previously before this Board in Docket Number TD-6585, was remanded to the property for further negotiations between the parties, by Award Number 6810. Conferences were held at Mobile, Alabama on January 5 and 6, 1955 by the parties resulting in no agreement being reached on the question. Therefore the matter is being resubmitted to your Honorable Board.

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 read 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

have on the GM&O) as **specifically providing a method of computation for payment to relief night chief dispatchers**, based on the number of days the regular night chief dispatcher works in a particular month.

We think these examples clearly show that the GM&O agreement is different from any other agreement that has been interpreted by this Board. If the parties to the contract had ever intended that the relief night chief dispatcher would receive 19.44% more than the regular night chief dispatcher, surely they would have put specific language into the contract to signify such a result, because it is obviously contrary to all railroad labor contracts to pay a relief man more than a regular man. Surely, members of this Board, who are intimately familiar with various labor contracts, will recognize this fact. In this case, we have a situation where the Dispatchers Association is insisting that a relief man be paid 19.44% more than a regular man. We think the unfairness of such a position, when it is not supported by contract, is obvious.

CONCLUSION

1. The only agreement between the parties, providing that dispatchers will relieve night chief dispatchers, will be found in the November 1, 1935 letter agreement which is on file with this Board. That agreement specifically says that under such conditions "they will be paid the regular rate of pay on the position relieved." This regular rate is properly determined by the formula sustained by this Board, at the insistence of the Dispatchers Association in Award 6377, which is the number of days worked by the night chief dispatcher in a particular month, divided into the monthly rate of the position.

2. The contract does **not** provide that the relief night chief dispatcher will receive more compensation than the regular rate of pay on the position relieved. To the contrary, the contract **does** provide that the compensation will be "the regular rate of pay on the position relieved."

3. The obvious unfairness of the Dispatchers' position is magnified by examining their claim that a relief night chief dispatcher will receive 19.44% more than a regular night chief dispatcher on the position relieved. There is not a scintilla of evidence that the parties to the contract intended such an inequity. This Board has previously construed the contract between the parties in Award 6377 as **not** requiring the inequity that the Association is now insisting upon.

(Exhibits not reproduced)

OPINION OF BOARD: The matter now before us was previously presented in Docket TD-6585 and was remanded to the property for further negotiations by the parties. Award 6810. Conferences were held by the parties at Mobile, Alabama on January 5, and 6, 1955, resulting in no agreement. The matter is now before us for final disposition.

The issue involves the proper method of computing the compensation of employes performing relief service on positions of day chief, night chief or assistant chief dispatchers. But this is not the first such claim that has reached us from this Carrier's property. The Association filed a claim here in Docket TD-6072, in which it alleged a failure on the part of the Carrier to comply with Article 1(a) and Article 3(c) of the Agreement in the matter of compensating Relief Dispatcher W. E. Albright for certain dates in March and April 1951. We sustained that claim in Award 6377.

It was our conclusion then that the Night Chief Dispatcher position was not "excepted" where "relief service" was required. And Claimant was entitled to be "paid at the rate applicable to the position worked". In short, the Association claimed, and we agreed, that claims of this kind were valid under Article 3(c), which 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.

"Each dispatcher's position shall be considered a 'relief requirement' as referred to herein. Any exceptions must be by agreement between the Management and the General Chairman."

While the instant claim also involves "relief service", the Association is now contending that the Carrier has violated Article 7(a) in that it has allegedly failed to properly compute the pay of those who have relieved day chief, night chief and assistant chief train dispatchers at offices in Jackson, Tennessee, Murphysboro, Illinois, Kansas City, Missouri, and Bloomington Illinois.

Article 7(a) provides for the payment of train dispatchers as follows:

"Train dispatchers shall be monthly employes, but the monthly compensation shall be computed on a daily basis.

"The daily rate of pay shall be determined by multiplying the regular monthly rate by twelve and dividing the result by 261."

This provision states the "basis of payment" of train dispatchers **when working as train dispatchers**. It provides a method of computation for determining the daily rate of these monthly employes. But it does not control the rate of pay for "relief service" on other positions. The Scope Rule of the parties' Agreement specifically states that, "... Day chief, night chief and assistant chief dispatchers who are not required to perform trick train dispatchers' duties, are not included within the scope of this agreement . . ." And as we have previously held, the "relief service" rule (Article 3(c)) is controlling where train dispatchers are assigned to perform the work of day chief, night chief or assistant chief dispatchers.

It follows that the same formula which we approved for the payment for relief service in Award 6377 is the formula to be applied in the instant case. Section (c) specifies that those assigned to such relief service shall be **"paid at the rate applicable to the position worked."** (Emphasis added).

It is our understanding from the record that the Carrier paid Claimants for the work in question according to the provisions of Article 3(c) as this Board required it to compensate the Claimant in Award 6377. If this is true, there has been no violation of the Agreement and the instant claim must be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1956.

DISSENT TO AWARD 7405 DOCKET NO. TD 7436

Any evaluation of the docket here in reference which professes to be even nominally objective can but lead to the conclusion that the Award here proposed is palpably and unconscionably erroneous. The proposal evidences a combination of incredible ineptitude, an incomprehensible lack of ability to understand and interpret the Agreement rules, and utter disregard for precedent established by a long line of this Division's Awards in previous cases, which are precisely in point.

The records of this Division disclose dissenting opinions by Labor Members of the Division only upon rare occasions when, as here, it is clearly justified and appropriate. Indeed, only upon two previous occasions during the three years last past have such dissents been recorded. During the same three years the Carrier Members have liberally contributed no less than eighty-eight dissenting opinions. Those dissents involve Awards applicable to almost every Organization coming within the jurisdiction of this Division, and are directed at no less than sixteen able and experienced Referees, in addition to the author of the Award here in reference. An examination of those eighty-eight dissenting opinions discloses earnest and repeated admonitions that established precedents must be accorded notice and support.

In the instant case those established precedents were called to the attention of the Referee,—in the record, in Petitioner's brief and during panel argument. No less than sixteen Awards of this Division, establishing an unbroken line of precedent, were cited to establish the fact that when a Train Dispatcher is performing service on an excepted position **he is nevertheless within the scope, and is covered by all of the rules of the Agreement.** The Referee agreed that he would be so covered, absent any exceptions. The record discloses that there are NO exceptions.

It being conceded that such Train Dispatchers are covered by all Agreement rules, and the Referee also recognizing that Train Dispatchers are monthly rated employees but with compensation computed on a daily basis, then it can only follow that that daily compensation must be computed as required by the Agreement. The record and Petitioner's brief herein repeatedly point out that the **ONLY** rule which provides how such daily compensation shall be computed is Article 7(a).

The record also clearly points out, as does Petitioner's brief, that the Carrier **IS** observing the correct divisor, **but at Train Dispatcher's pay rate.** Award 6810 of this Division, which remanded the dispute to the parties for further negotiations, expressly held that Carrier's method of compensating claimants was wrong, and further held that the rate must be "geared to the rate of the position relieved."

The Award here proposed accords no recognition to such material facts. The only authority cited is Award 6377. The record and Petitioner's brief clearly point out the inapplicability of Award 6377, which case was concerned with a different basic issue. Moreover, during the oral hearing before the Referee, Carrier expressly acknowledged that Award 6377 was disposed of by payment of the claim computed on the basis of the correct divisor applicable to the operating division on which that claim arose.

In the Award proposed here the Referee evidences an incredible misunderstanding of Article 3(c) of the Agreement, and its relation to other Agreement rules. Article 3(c) clearly provides that the relief service shall be paid for at the rate applicable to the position worked. But Article 7(a), as has been repeatedly held in precedent cases, is the rule which determines how the required daily rate is to be computed.

Here, the majority are in the completely untenable position of disagreeing with principles which many of their dissenting opinions have so strenuously urged must be observed.

In their dissent in Award 6689 it is earnestly submitted that:

"The Referee has reached his conclusion in this Award by disregard of the facts, disrespect of precedent, and misapplication of the Agreement. . . ."

And in dissenting to Award 6688 they aver that the Award is:

". . . contrary to the many consistent awards which have been rendered by this Division on the questions involved in this case. The improper and unnecessary confusion which would result if this decision were to be given faith and credit would be harmful and unfortunate."

Those two quotations from previous dissents by Carrier Members precisely describe the unwarranted, arbitrary, inept and erroneous Award here proposed. And, indeed, to accord such a proposed Award "faith and credit would be harmful and unfortunate." This Board concerns itself with the prompt and orderly settlement of disputes such as that submitted in the instant docket. It is NOT our function to create chaos and confusion. Yet such would be an inevitable corollary if this ill-advised and incorrect proposal were to be recognized as an intelligent and supportable disposition of the claim.

R. C. COUTTS

Labor Member—Third Division
N R A B

Chicago, Illinois, September 19, 1956.

**SPECIAL CONCURRENCE TO AWARD NO. 7405, DOCKET
NO. TD-7436**

In answer to the dissent filed to this Award, it should suffice to simply say, "The Award speaks for itself"; however, in order to clarify a somewhat confused situation, attention is directed to the following:

The Gulf, Mobile and Ohio Railroad Company, as presently constituted, is the result of that Road's acquiring and merging with it the Mobile and Ohio Railroad Company and, several years later, acquiring and merging with it The Alton Railroad Company.

On November 1, 1935, several years prior to its merger with the Gulf, Mobile and Ohio Railroad Company, the Alton entered into an agreement with the American Train Dispatchers Association, said agreement being signed by A. M. Gorman, General Chairman of the Association, and H. B. Voorhees, Vice President of the Alton.

Under the Scope Rule of that agreement, the positions of chief train dispatchers and assistant chief train dispatchers were wholly excepted therefrom, except that it provided "they shall retain and continue to accumulate seniority as train dispatchers."

On that same date (November 1, 1935), Vice President Voorhees addressed a letter to his two Division Superintendents (with copy to Mr. Gorman), from which the following is taken:

"We will also continue the practice of using qualified train dispatchers on their district to relieve chief dispatchers and assistant chief dispatchers on their rest days and vacation periods, and they will be paid the regular rate of pay on the position relieved." (Emphasis supplied.)

The agreement of November 1, 1935, contained no provision for the promotion of train dispatchers to such excepted positions, that being a managerial prerogative.

All of these excepted positions were seven-day positions, and the occupants thereof were allowed one day off each week. They were paid a monthly salary.

At the time of the signing of this agreement (November 1, 1935) there were and are still maintained but two train dispatching offices on the old Alton Line, i. e., Bloomington, Illinois, and Kansas City, Missouri.

The November 1, 1935, agreement with the Association provided that train dispatchers would be allowed one day off in each seven, relief being provided on the rest day.

Mr. Voorhees' letter of November 1, 1935, hereinbefore referred to, is quoted in full later on in this Special Concurrence.

Effective July 1, 1948, the Gulf, Mobile and Ohio Railroad Company entered into an agreement with its train dispatchers, represented by the American Train Dispatchers Association, governing hours of service and working conditions. The following rules are quoted therefrom:

"ARTICLE 1.

"(a)—SCOPE:

"The term 'train dispatchers', 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. Day chief, night chief, and assistant chief train dispatchers who are required to perform trick train dispatchers' duties, shall also be excepted from the provisions of this agreement, other than the weekly rest day, relief service and vacation provisions thereof." (Emphasis supplied.)

"ARTICLE 3.

"(a)—REST DAYS:

"Each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half. An extra train dispatcher required to work seven consecutive days as a train dispatcher, will be paid time and one-half for service performed on the seventh day.

* * * * *

"(b)—REST DAY ASSIGNMENT:

* * * * *

"(c)—RELIEF SERVICE:

"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.

"Each dispatcher's position shall be considered a 'relief requirement' as referred to herein. Any exceptions must be by agreement between the Management and the General Chairman.

"Note: In the application of Article 3, it is understood that practices now in effect with respect to relieving train dispatchers for their rest days will continue in effect in the respective train dispatching offices. If required to work such relief days under present practices, compensation will be allowed at time and one-half.

"(d)—EXTRA RELIEF SERVICE:

"Relief service of less than four days per week shall be considered extra work, and shall be performed by extra train dispatchers, who will be paid the daily rate of each position for which service is performed.

"(e)—COMBINING TERRITORY, DUTIES OR RESPONSIBILITIES FOR RELIEF:

* * * * * (Emphasis supplied.)

"ARTICLE 7.

"(a)—BASIS OF PAYMENT:

"Train dispatchers shall be monthly employees, but the monthly compensation shall be computed on a daily basis.

"The daily rate of pay shall be determined by multiplying the regular monthly rate by twelve and dividing the result by 313."

This basic agreement is signed for the Carrier by G. P. Brock, Vice President and General Manager, and for the Association by T. H. Peters, General Chairman, Northern Region (former Alton Line), and Morton Alvis, General Chairman, Southern Region.

With the signing of the basic agreement effective July 1, 1948, on the same date the parties entered into a Memorandum of Understanding, as follows:

"MEMORANDUM OF UNDERSTANDING

By and Between the

GULF, MOBILE AND OHIO RAILROAD
COMPANY

and its

TRAIN DISPATCHERS

Represented by the

AMERICAN TRAIN DISPATCHERS
ASSOCIATION

In Connection with Application of the
Governing Agreement Effective
July 1, 1948

"ARTICLE 1(a): Scope

"It is the intent of the said agreement that it is the option of the Carrier, at any time, to require or not to require trick train

dispatchers to assume also the duties and responsibilities of a chief train dispatcher, night chief train dispatcher, or assistant chief train dispatcher. When a trick train dispatcher is required also to assume the duties and responsibilities of a chief train dispatcher, a night chief train dispatcher, or an assistant chief train dispatcher, his compensation will be fixed by Management. (Such compensation will not be less than the daily rate of trick train dispatcher.)

"It is understood, however, that any such chief, night chief or assistant chief dispatcher—train dispatcher position requires the incumbent to occupy the same subject to his seniority rights on that seniority district. But such status is reserved for the determination of the carrier.

"EXAMPLE:

(No application to this dispute.)

"ARTICLE 4(h):

(No application to this dispute.)

"ARTICLE 4(i):

(No application to this dispute.)

"ARTICLE 8(d):

(No application to this dispute.)

(Emphasis supplied.)

"It is not the intent of the said agreement to change practices on the Eastern and Western Divisions (former Alton), as outlined in the following letter:

"THE ALTON RAILROAD COMPANY

Office of Vice President
340 West Harrison Street
Chicago

"Chicago, Nov. 1st, 1935
File 1-886

"H. B. Voorhees,
Vice President

"Messrs.

C. W. Bearden Superintendent
J. J. Butler, Superintendent

"Dear Sirs:

"I have this date signed an agreement with The American Train Dispatchers' Association, covering rules and working conditions for Alton dispatchers.

"Under this agreement, dispatchers will receive an assigned rest day each week and a vacation of two weeks per annum with full pay, under the conditions set forth in the agreement.

"This agreement does not include nor affect chief dispatchers or assistant chief dispatchers, except that it provides they shall retain and continue to accumulate seniority as train dispatchers. However, we will grant chief dispatchers and assistant chief dispatchers the same consideration with respect to relief days and vacations as is granted to trick dispatchers.

"We will also continue the practice of using qualified train dispatchers on their district to relieve chief dispatchers and assistant chief dispatchers on their rest days and vacation periods, and they will be paid the regular rate of pay on the position relieved.

"I am giving a copy of this letter to Mr. Gorman as a matter of information.

"Yours very truly,

"(sgd) H. B. Voorhees,
Vice President.

"(B)

"cc* Mr. A. M. Gorman, Vice President
American Train Dispatchers' Assn.,
10 East Huron Street,
Chicago, Illinois."

(Emphasis supplied.)

The above-quoted letter of Mr. Voorhees was included in the Memorandum of Understanding at the insistence of the Association. The parties signatory to this Memorandum of Understanding are the same as those who signed the basic agreement effective July 1, 1948.

On July 8, 1949, a supplementary agreement, effective September 1, 1949, was entered into between the parties, revising certain rules pertaining to the working conditions of Carrier's train dispatchers. Mr. G. P. Brock, Vice President and General Manager, represented the Carrier, and the Association was represented by Mr. J. B. Tipler, Vice President, and Mr. Morton Alvis, General Chairman.

The last sentence of the Scope Rule (Article 1(a)) in the basic agreement reads:

"Day chief, night chief, and assistant chief train dispatchers who are required to perform trick train dispatchers' duties, shall also be excepted from the provisions of this agreement, other than the **weekly rest day**, relief service and vacation provisions thereof."
(Emphasis supplied.)

The only change made in the revised Scope Rule was that the words "**weekly rest day**" were changed to read "**weekly rest days**."

In the supplementary agreement effective September 1, 1949, Article 3(a) was revised to provide that "Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, * * *." The revised rule reads:

"ARTICLE 3

"(a)—REST DAYS:

"Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as

rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week.

"Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days.

"Extra train dispatchers who are required to work as train dispatcher in excess of five (5) consecutive days shall be paid one and one-half times the basic straight-time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

"Note: The above paragraph is not to be construed to mean a sixth and/or seventh day unless service has actually been performed on each of the five consecutive days preceding the sixth day.

"The term 'rest days' as used in this agreement means that for a regularly assigned train dispatcher seventy-two (72) hours, and for a regularly assigned relief train dispatcher (who performs five (5) consecutive days' train dispatcher service) fifty-six (56) hours, shall elapse between the time he is required to report on the day preceding his rest days and the time he is required to report on the day following his rest days. These definitions of the term 'rest days' will not apply in case of transfers due to train dispatchers exercising seniority." (Emphasis supplied.)

It will be noted that Article 3(c) is identical to that in the basic agreement.

In the revision of Article 7(a) in the supplementary agreement, no change was made in the first paragraph thereof; the second paragraph was revised to provide for a divisor of 261 (days) to determine the daily rate of the monthly salary paid train dispatchers, as against the divisor of 313 (days) in the basic agreement. The revised second paragraph reads:

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

Articles 3 and 7 deal with the positions of train dispatchers as such.

On April 3, 1953, the Association filed with this Division a claim against the Gulf, Mobile and Ohio Railroad Company, which was progressed in the usual manner under Docket No. TD-6585. The case was assigned to Referee Francis J. Robertson and covered by Award No. 6810. The dispute was remanded to the parties for the reasons advanced in the Opinion and Findings. While the claim in Docket TD-6585 is set forth in general terms, an examination of the docket readily discloses it involved the only two dispatching offices located on the Alton Line, i. e., Bloomington, Illinois, and Kansas City, Missouri. (It will be noted Award No. 6810 refers to prior Award No. 6377 involving the same parties.)

On or before February 25, 1955, the Association filed with this Division a claim against the Gulf, Mobile and Ohio Railroad Company, which was given Docket No. TD-7436. In its "Statement of Facts" therein, the Association states:

"This matter previously before this Board in Docket Number TD-6585, was remanded to the property for further negotiations be-

tween the parties, by Award Number 6810. Conferences were held at Mobile, Alabama on January 5 and 6, 1955 by the parties resulting in no agreement being reached on the question. Therefore the matter is being resubmitted to your Honorable Board."

In the face of this Statement, the Association expanded the claim to include train dispatcher offices at Jackson, Tennessee, and Murphysboro, Illinois, neither being located on the old Alton Line.

The position of the Association in Docket TD-6585 (Award 6810) is based solely on the November 1, 1935, letter of Vice President Voorhees to his two Division Superintendents (a copy of which letter was sent to Mr. Gorman as information only), and is further supported by the following statement of the Association in its "Statement of Facts" in that docket:

"This claim grew out of the fact that the Carrier, by unilateral action began compensating train dispatchers, who performed relief service on chief, night chief and/or assistant chief dispatcher positions, at the rate of trick train dispatcher, instead of at the proper daily rate of the position worked, **determined by multiplying the regular monthly rate of such position by 12 and dividing the result by 261, as required by Article 7-(a) supra.**" (Emphasis supplied.)

These excepted positions are paid on a monthly basis and are assigned to work six days per week, or 313 days per annum. Revised Article 7(a) provides for a divisor of 261 to determine the daily rate of monthly compensated train dispatchers as such. To use 261 as the divisor to determine the daily rate of these excepted positions, as demanded by the Association, results in distorted mathematics and is not sound.

With regard to the addition of two train dispatching offices not located on the Alton, the Carrier avers it has no knowledge of any dispute involving those offices.

In Awards 6810 and 7405, reference is made to Award 6377. While the claim in Award 6377 was sustained, a compromise settlement was reached between the parties, i. e., the General Chairman and a representative of the Carrier, as is evidenced in the form of an agreement on file with the Secretary of the Division. This compromise settlement was reached November 19, 1953, while Docket No. TD-6585, involved in Award No. 6810, was being progressed before this Division.

The following is taken from the agreement reached on Award No. 6377:

"We were in accord that the award and order would be satisfied by a payment of \$11.25 to Claimant W. E. Albright.

"As to the services performed by W. E. Albright subsequent to April 10, 1951, we agreed that a lump payment of \$200.00 to Relief Trick Train Dispatcher W. E. Albright would settle all potential claims for all relief service performed up to and including December 31, 1953.

"It was further understood and agreed that effective **January 1, 1954**, and thereafter as long as the Supplemental Agreement is in effect relative to six-day service for trick train dispatchers on the Alabama, Tennessee, Louisiana, and Southern Divisions, the daily rate of pay for trick train dispatchers performing relief service on the position of Night Chief Dispatcher at Meridian, Mississippi and the Day Chief Dispatcher at New Albany, Mississippi, so long as said Chief Dispatchers are required to work a trick, **shall be determined by dividing the regular salary allowed to said chiefs by 313.**

"It was further understood and agreed that the payment of \$200.00 to Claimant Albright would satisfy all claims for relief

service performed on the position of Night Chief Dispatcher at Meridian, Mississippi." (Emphasis supplied.)

In connection with Article 7(a), Award No. 7405 held:

"This provision states the 'basis of payment' of train dispatchers when working as train dispatchers. It provides a method of computation for determining the daily rate of these monthly employees. But it does not control the rate of pay for 'relief service' on other positions. The Scope Rule of the parties' Agreement specifically states that, '. . . Day chief, night chief and assistant chief dispatchers who are not required to perform trick train dispatchers' duties, are not included within the scope of this agreement . . .'. And as we have previously held, the 'relief service' rule (Article 3(c)) is controlling where train dispatchers are assigned to perform the work of day chief, night chief or assistant chief dispatchers.

"It follows that the same formula which we approved for the payment for relief service in Award 6377 is the formula to be applied in the instant case. Section (c) specifies that those assigned to such relief service shall be 'paid at the rate applicable to the position worked.'

"It is our understanding from the record that the Carrier paid Claimants for the work in question according to the provisions of Article 3(c) as this Board required it to compensate the Claimant in Award 6377. If this is true, there has been no violation of the Agreement and the instant claim must be denied." (Emphasis supplied.)

We, the undersigned Carrier Members of the Third Division, are in full accord with the Opinion and Award in Award No. 7405, Docket No. TD-7436.

/s/ C. P. Dugan
/s/ W. H. Castle
/s/ R. M. Butler
/s/ J. E. Kemp
/s/ J. F. Mullen

REPLY TO SPECIAL CONCURRENCE TO AWARD 7405, DOCKET TD 7436

The "answer" to the Dissent herein understandably "answers" by the snide device of saying only that—"The Award speaks for itself," and then proceeds at great length to "clarify" in such a manner that further "clarification" is appropriate.

The Memorandum of Understanding, referred to at pages five and six of the "Special Concurrence" is clearly inapplicable here. As even a casual reading of that document discloses, it has application only to those situations wherein a position of Chief, Night Chief or Assistant Chief Dispatcher is combined with a trick train dispatcher position. The same is true of a subsequent reference to Article 1(a), Scope, which also has clear reference to combined positions.

In making reference to Award 6810 the Special Concurrence conveniently and understandably ignores the fact that we there expressly held that Carrier's method of compensating Claimants was WRONG.

Moreover, in plain disregard of the record, Carrier members are in error in stating that the claim involved here was "expanded" to include Jackson, Tennessee and Murphysboro, Illinois. The Statement of Claim for Award

6810 clearly extends to "employees who are fully covered." The record here clearly establishes, and Carrier has never denied, that the employees at those two points ARE "fully covered."

Finally, the Special Concurrence refers to a compromise settlement relating to Award 6377, underlining the fact that the 313 divisor was agreed to in computing the compensation due under the Award. In that case Carrier denied the applicability of the 313 divisor. As the record in this case clearly reveals, the 313 divisor was, and still is, applicable on the operating division involved in Award 6377. The record is equally clear that on the operating divisions involved in the instant case that the 261 divisor applied. Further, the record is clear and undenied that the 261 divisor is being applied on those divisions, but at Trick Train Dispatcher's rate, despite the clear and unequivocal holding in Award 6810 that the rate "must be geared to the rate of the position relieved."

The Special Concurrence of the Carrier members herein completely and understandably ignores the issues raised in the dissenting opinion, and the distortions of fact herein pointed out are unconscionable and indefensible.

R. C. Coutts
Labor Member

Third Division—N R A B

Chicago, Illinois, October 5, 1956.