

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

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**PARTIES TO DISPUTE:**

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(a) The Central of Georgia Railway Company, hereinafter referred to as "the Carrier" violated the currently effective Schedule Agreement between the parties to this dispute Article 1 thereof in particular, when on the days and in respect to the individual claimants specified in Paragraph (b) of this Statement of Claim, Carrier required them, and each of them, to perform service as Chief Train Dispatcher in addition to their respective assignments as train dispatchers and failed and refuse to compensate them, or any of them, for such service as Chief Train Dispatcher.

(b) Carrier now be required to additionally compensate the individual claimants here identified one day's compensation at Chief Train Dispatcher's rate for each date upon which they were required to perform service as such in addition to their regular duties:

- (1) J. D. Grubbs, June 10, 17, 24, July 1 and 15, 1959.
- (2) J. M. Thorpe, July 21, 1959.
- (3) J. H. Epting, July 10, 11 and 17, 1959.
- (4) J. E. Bedgood, Jr., June 21, 28, July 5 and 12, 1959.
- (5) William Raines, June 16, 23, 30, July 6, 7, 14 and 20, 1959.
- (6) J. B. Benton, Sr., June 15, 22, 29, July 13, 27 and 28, 1959.
- (7) E. W. Smith, June 14, July 18, 19, 25 and 26, 1959.
- (8) G. L. Durden, June 13, 19, 20, 27, July 3, 4, 8, 9, and 23, 1959.

- (9) B. A. Lunsford, June 11, 12, 18, 25, 26, July 2, 16, 23, and 24, 1959.

**EMPLOYES' STATEMENT OF FACTS:** An Agreement between the parties, effective April 1, 1938, as subsequently revised, is on file with your Honorable Board and by this reference is made part of this submission as though fully incorporated herein.

Rules pertinent to the claim here involved provide:

**"ARTICLE 1.**

**"(a) Scope.**

The provisions of this Agreement shall apply to all positions of Train Dispatcher as the term 'train dispatcher' is defined, **and the duties are described, in the Orders of the Interstate Commerce Commission.** (Emphasis ours.)

**"NOTE:** It is agreed that one chief dispatcher position on the territory under the jurisdiction of one superintendent shall be excepted from the provisions of this Agreement, other than the weekly rest day, **relief service** and vacation provisions thereof." (Emphasis ours.)

**"(b) Classification.**

Payroll classification of any person performing service specified in Article I, Section (a), shall conform with such service."

The Orders of the Interstate Commerce Commission as referred to in Section (a) of Article I describe the duties of Chief Train Dispatcher as follows:

"The above classes include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of Train Dispatchers and other similar employees; to supervise the handling of trains and the **distribution of power and equipment incident thereto; and to perform related work.** Illustrative Examples of Positions:

Assistant Chief Train Dispatcher:

Night Chief Train Dispatcher:

Chief Train Dispatcher:

Chief Dispatcher." (Emphasis ours.)

The usual hours of the Chief Train Dispatcher and the trick train dispatchers in the Carrier's Macon, Georgia Office where the instant claims were originated are:

Chief Train Dispatcher, 8:00 A. M. to 5:00 P. M.

Two — trick train dispatchers, 7:30 A. M. to 3:30 P. M.

Two — trick train dispatchers, 3:30 P. M. to 11:30 P. M.

Two — trick train dispatchers, 11:30 P. M. to 7:30 A. M.

or grant new rules, and will therefore not attempt to further restrict Carrier's rights, there is ample reason for a denial award for this sole reason, if for no other.

The management has not negotiated away its inherent right to determine its supervisory requirements and thus determine when supervision (a Night Chief Dispatcher) is needed.

Performance of the work in the manner indicated was in conformity with past, accepted and agreed-to practices on the property of the Central of Georgia Railway, all of which is proven by probative evidence; including Third Division Award No. 6378;

The Board is without authority to grant the **new Agreement and rule** here demanded, and has so recognized in numerous prior awards;

The claim is dead under the Time Limits Rule, and should be dismissed;

Claim is clearly **not** supported by the Agreement of April 1, 1938, as amended; the Board cannot do other than make a denial award.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of this dispute.

Carrier, not having seen the Employees' submission in this dispute, reserves the right to present such additional evidence and argument as it deems necessary.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The part of the Scope Rule of the Agreement, effective April 1, 1938, pertinent to a determination of this claim, read as follows:

"(a) SCOPE.

"The provisions of this Agreement shall apply to all positions of Train Dispatcher as the term 'train dispatcher' is defined, and the duties are described, in the Orders of the Interstate Commerce Commission."

Quoted below are the definitions of the positions and duties contained in the Orders of the Interstate Commerce Commission, as referred to in Article 1 (a) of the Agreement.

**"Definition of Chief, Night Chief and Assistant Chief Dispatchers' Positions:**

"These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

Petitioner contends that all of the individual Claimants were required to perform the duties of a Chief Train Dispatcher, when the Chief Train Dispatcher, a higher rated position, was not on duty, in violation of the Agreement.

(1) The Carrier maintains that this is simply an attempt on the part of the Employes to compel the Carrier to provide additional employes (or an adequate force) and that they, rightfully, should have proceeded under the National Agreement between the Association of American Railroads and the American Train Dispatchers Association; (2) Carrier urges that this Board would have to dismiss this claim, in any event, on account of it not having been processed in accordance with the provisions of the Time Limit Rule; (3) Carrier contends that the Claimants, Trick Dispatchers, submitted no proof of any kind that Claimants performed the type of work belonging exclusively to the higher classification of Chief Dispatcher and that duties performed by Claimants here were simply related work as referred to in the definition of their duties in the Rules of the Interstate Commerce Commission, heretofore quoted.

A claim, involving the same parties as in the current dispute, similar to this one, in which the situation was nearly identical, resulted in a denial award — Award No. 6378 (Kelliher). Claimants contend the present claim is dissimilar in that it is charged that Claimants were required to "Supervise the distribution of power and equipment" which was not one of their assigned duties. This was merely an assertion made by Claimants not confirmed by any proof, so consequently cannot be considered by this Board.

There being no evidence of error in Award No. 6378, and the same parties being involved as are in the present claim, we feel it is controlling and the claim should be denied on the merits.

Having determined there should be a denial award, nothing would be gained by further discussion of the procedural questions raised by the Carrier.

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

That the parties waived oral hearing;

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 Agreement has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.