

Award No. 11319
Docket No. TD-13331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(a) The Chicago and Eastern Illinois Railroad Company, (hereinafter referred to as "the Carrier"), violated the currently effective Schedule Agreement between the parties, including Articles 1 and 3 thereof, when it failed to properly compensate Train Dispatcher D. J. Hanna for services performed August 9th to 18th and August 21st to September 1st, 1961, all dates inclusive.

(b) The Carrier shall now be required to additionally compensate the individual claimant for services performed on the dates specified in paragraph (a) above in the amount representing the difference between what he was compensated and the pro rata daily rate of Assistant Chief Train Dispatcher, excepting for August 14th, 15th, 26th and 27th for which dates the amount shall be the difference between what he was compensated for those days and the time and one-half rate of Assistant Chief Train Dispatcher.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, identified as "Schedule No. 4" effective December 1, 1950. 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 incorporated herein.

Article 1 (a) and (b), Article 3 (a) and (b), Article 8 (a) and addendum No. 1 are particularly pertinent to this dispute and, for ready reference of your Honorable Board, are quoted here as follows:

"ARTICLE 1

"(a) Scope

The term 'Train Dispatcher' as herein used shall include Chief, Assistant Chief, Trick, Relief, and Extra Train Dispatchers, except

POSITION OF CARRIER: Article 1, paragraph (a) Scope of the current agreement reads as follows:

“(a) Scope

“The term ‘Train Dispatcher’ as herein used shall include Chief, Assistant Chief, Trick, Relief, and Extra Train Dispatchers, except one Chief Train Dispatcher in each dispatching office, who will not regularly be required to perform Trick Train Dispatchers’ duties.”

The position of Chief Train Dispatcher at Salem is one of two Chief Dispatcher positions excepted from the scope of the current agreement. The issue here presented, that is the right of the Organization to legislate with respect to the excepted position of Chief Dispatcher, was decided in Third Division Award No. 7027, American Train Dispatchers Association versus Chicago & Eastern Illinois Railroad Company, Referee LeRoy A. Rader. The Board there decided that the Chief Dispatcher positions “* * * are outside of the Agreement’s scope.” It was decided, therefore, that the question presented for interpretation was outside the jurisdiction of the Board.

Here Petitioner is seeking to control the rate of pay for employees filling the excepted position of Chief Dispatcher. As set out in Carrier’s statement of facts, claimants’ services on the excepted Chief Dispatcher position was entirely voluntary and were terminated by the employees involved by their own volition when they no longer desired to perform this work. Inasmuch as the Chief Dispatcher position is outside the agreement’s scope, claimants’ services on the excepted positions were likewise outside the agreement’s scope and the instant claims must, therefore, be dismissed for want of jurisdiction.

All data contained herein has been handled with the representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the Chicago & Eastern Illinois Railroad Company and the American Train Dispatchers Association. The Claimant, D. J. Hanna was an assigned train dispatcher in Salem, Illinois. On the dates set forth in the claim herein Claimant performed temporary services on the position of chief train dispatcher. He performed such services August 9 to 18, inclusive, and August 21 to September 1, inclusive. Petitioner contends that Claimant is entitled to compensation at time and a half rate for the sixth and seventh days of service in each instance. Claimant contends that the occupant of the chief train dispatcher office was the only person excepted from the scope of the Agreement. Carrier contends that the position of chief train dispatcher is excepted from the agreement.

There is a line of authorities which hold that only the occupant of the position of chief train dispatcher is excepted from the agreement and that any employe relieving him would be entitled to the benefits of the agreement. We note, however, that none of these awards are between the same parties. There are three previous awards between the same parties hereto: 7027, 10705 and 11110 which hold that the position, as well as the occupant, is excepted under the agreement. We believe we are obliged to follow the awards on the same property unless we are prepared to hold that they are palpably wrong and are prepared to overrule them. This we cannot do. For the foregoing reasons we find the Agreement was not violated.

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1963.

LABOR MEMBER'S DISSENT TO AWARD 11319 **DOCKET TD-13331**

Award 11319 is clearly in error.

The Award itself recognizes a long-established principle that:

"There is a line of authorities which hold that only the occupant of the position of chief train dispatcher is excepted from the agreement and that any employe relieving him would be entitled to the benefits of the agreement."

This line of authorities extends from Award 2943 issued in 1945, when the question first came to the Board and includes Awards 2944, 2986, 3096, 3344, 4012, 5202, 5244, 5371, 5659, 5716, 5829, 5904, 5975, 6292, 6581, 6583, 6746, all of which correctly sustained the claimants and upheld this principle on 16 separate railroads until 1954.

On the C & E I, the question of relief work on the chief's position was brought to the Board and in June 1955, a dismissal Award No. 7027, and not a denial, was rendered in a short opinion as follows:

"This case does not contain a monetary claim.

"A reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions are outside of the Agreement's scope.

"Therefore, the question presented for interpretation is outside of the jurisdiction of this Board."

This Award dismissed the claim for lack of jurisdiction but unfortunately the Referee inserted inappropriate dicta which was to be later misconstrued.

Despite this lone contrary Award, which actually resolved nothing, the Board in May 1957 in Award 7914 on the T & PRR once again correctly adhered to the well-established principle so amply expressed and quoted in the previously mentioned 18 Awards.

Awards 10705 and 11575, both not only incorrect but inappropriate and controversial, as pointed out in the dissents thereto, were then rendered on this property.

Now comes again, a misled Majority in Award 11319 and for the specious reasoning that precedent in Awards must be followed on the SAME property, the claim is denied.

It is apparent that this Board has now reached the stage of consistent error and by such consistency has rendered an interpretation for a rule on the C & E I property clearly contrary to the findings of the Board in interpreting the same or like rules on ALL other properties.

For this and other reasons, Award 11319 is in error and dissent is hereby registered.

R. H. Hack

Labor Member