

Award No. 11407

Docket No. TD-12752

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railroad Company, hereinafter referred to as "the Carrier," violated the currently effective agreement between the parties, Article 3(b) specifically, when it declined and continues to decline to regularly assign a relief train dispatcher and compensate him in accordance with the provisions of Article 3(b) in its train dispatching office at Osawatomie, Kansas, where relief requirements regularly necessitate four (4) days' relief service per week.

(b) The Carrier shall now compensate Mr. F. J. Howell one day's compensation at the rate applicable to trick train dispatcher for each of the following dates; May 24, June 14, and June 21, 1960, on which dates he was deprived of work to which he was contractually entitled under the agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an agreement between the parties to this dispute effective August 1, 1945, reprinted March 1, 1955 and subsequently amended. A copy of this agreement and subsequent amendments are on file with your Honorable Board and by this reference are made a part of this submission as though they were fully set out herein.

The agreement rules particularly pertinent to this dispute are quoted here for ready reference.

"Article 1

"(a) Scope

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher,' as here-

All matters contained herein have been the subject of discussion in conference or through correspondence between the parties hereto on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is predicated on the contention that in the Carrier's train dispatching office at Osawatomie, Kansas, there were four days of regular relief work, including relief on the excepted Chief Dispatcher (Division Trainmaster) position. The Employees include as one of the four days of relief which they claim existed at this office, the one regularly assigned day off per week of the excepted Chief Dispatcher. The Employees argue that this day off is a regular "relief requirement" within the meaning of Article 3(b) of the parties' agreement for the reasons that their letter agreement dated December 6, 1947, revised October 5, 1951, requires "Chief Train Dispatchers (now titled Division Trainmasters on this property . . .) to take one regularly assigned day off per week . . ." and provides that on those days such positions shall be filled by employees within the scope of the agreement. On these grounds, the Employees contend that the Carrier is obligated to comply with the requirements of Article 3(b) of the Agreement that:

"Where relief requirements regularly necessitate four (4) or more days' relief service per week a relief train dispatcher shall be employed and regularly assigned . . . On days when not engaged in train dispatcher service he shall be assigned to such other service as may be directed by the proper supervisory officer and shall be paid for such service at the rate applicable to trick train dispatcher . . ."

According to the Employees, such a relief position should be bulletined as a regular assignment under the provisions of Article 5 of the agreement. The Employees also cite as pertinent to this dispute agreement rules contained in Article 1(a), 3(a), 4(e), and 8(f).

Article 1(a) "Scope" reads as follows:

"This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher,' as herein-after used, shall include Assistant Chief, trick, relief and extra train dispatchers. It is agreed that one Chief Dispatcher (now titled Division Trainmaster on this property) in each dispatching office shall be excepted from the scope and provisions of this agreement."

Article 4(e) reads as follows:

"In filling positions of train dispatchers, ability being sufficient, seniority as train dispatcher shall govern."

It is undisputed that there is one Chief Dispatcher (Division Trainmaster) in Carrier's Osawatomie, Kansas, train dispatching office. The last sentence of Article 1(a) of the agreement clearly excepts this Chief Dispatcher "from the scope and provisions" of the agreement. As a result of this plain provision, neither this excepted Chief Dispatcher nor the "one regularly assigned day off per week" required of him by the letter agreement can be regarded as within the "scope and provisions" of the agreement which includes Article 3(b). The provision of the letter agreement which requires the filling of the Chief Dispatcher position on such days off with employees covered by the agreement does not by its terms nullify or limit the exception contained in Article 1(a)

of the agreement, and we do not find, nor are we referred to, anything in the letter agreement which suggests that this provision was to accomplish such a result.

The letter agreement provides for the continuation of the "... present practice of requiring Chief Train Dispatchers ... to take one regularly assigned day off per week ...". This language clearly indicates that the "one regularly assigned day off per week" requirement is an incident of employment as Chief Train Dispatcher. Since this requirement is an incident of employment as Chief Train Dispatcher, it is necessarily excepted from the agreement when employment as Chief Dispatcher is so excepted by reason of Article 1(a) of the agreement.

The Employees refer to awards of this Division which hold that the train dispatcher remains covered by the train dispatchers' agreement while he is used on the excepted Chief Dispatcher position in the absence of the occupant of that position. These awards reached this conclusion on the basis that the train dispatcher does not become the incumbent of the excepted Chief Dispatcher position or acquire that position because he temporarily fills or acts in that capacity in the absence of the excepted Chief Dispatcher; e.g., see Awards 3096, 5202, 5244. Consequently, it must also be concluded that the exception from the agreement remains effective when the excepted Chief Dispatcher is absent on his assigned day off.

Furthermore, the provisions of the letter agreement which state that:

"... In affording Chief Train Dispatchers relief days and vacations, or when such Chief Train Dispatchers are otherwise temporarily absent for one or more days, positions shall be filled from those covered by your agreement, but the Carrier is privileged, if in its judgment necessary, to require the position be filled by the dispatcher in that office whom it considers best qualified; qualifications being equal, the senior man will be given the preference. The question as to who shall fill such Chief Train Dispatcher positions shall be determined in each office in the best interest of men and company alike, with the understanding that in the event of difference the company's interest shall control ...". (Emphasis ours.)

preclude application of the agreement as claimed is this case by the Employees. Since these provisions require that the Carrier's "interest shall control" who, covered by the agreement, shall fill the excepted Chief Dispatcher position "In affording ... relief days," they necessarily bar establishment of a position under Article 3(b) which must be filled in accordance with the rules of the agreement rather than on the basis of the "company's interest" which "shall control."

In support of their assertion that for many years Carrier's offices either included the one regularly assigned day off of the Chief Dispatcher in a regular relief assignment under Article 3(b) or included in such relief assignment the day on which a trick train dispatcher acted as Chief Dispatcher while the latter was off, the Employees attached to their submission four bulletins which illustrate the first mentioned situation and two bulletins which illustrate the alternative situation mentioned. Carrier objects to these bulletins on the basis that they were not presented to it on the property, but, nevertheless, asserts that they "represent but three dispatching offices on this Carrier where at that time we had fourteen dispatching offices."

While, for the reasons already explained, the Carrier was not obligated

to include the one regularly assigned day off of the excepted Chief Dispatcher as part of a regular assignment under Article 3(b) of the agreement, nothing in the letter agreement or the agreement barred its train dispatching offices from doing so. Such action cannot be regarded as a waiver of the Article 1(a) exception from the agreement or of the provision of the letter agreement for Carrier control of filling the positions in affording relief days. Indeed, the letter agreement provides that "... The question as to who shall fill such Chief Train Dispatcher positions shall be determined in each office in the best interest of men and company alike, . . ."

We find that unambiguous terms of the rules agreement and the letter agreement applicable to this dispute, and which have been discussed in this respect, require denial of this claim.

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 May, 1963.