

Award No. 11430

Docket No. TD-12866

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, specifically the Letter Agreement dated St. Louis 3, Missouri, October 31, 1947 - file BS-TS 246-138, when, effective March 18, 1961, it reduced the rate of pay of Assistant Chief Dispatcher R. J. Dugan, one of the individuals covered in said Letter Agreement, while he continued on the position on the division where assigned on the date of the Letter Agreement, in the amount of \$35.03 per month, which is the differential alluded to in said Letter Agreement.

(b) The Carrier shall now restore said differential of \$35.03 per month to Claimant R. J. Dugan, effective March 18, 1961, and continue such differential in full force and effect so long as said Letter Agreement remains in effect.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the Missouri Pacific Railroad Company and American Train Dispatchers Association governing rates of pay, hours of service and working conditions of Train Dispatchers, effective August 1, 1945, except as otherwise indicated, and reprinted March 1, 1955. Said Agreement hereinafter referred to as "the Agreement", is on file with your Honorable Board and by this reference is made a part of this Submission as though fully incorporated herein.

For the convenience of the Board we quote below the rules pertinent to the instant dispute:

"ARTICLE 1
(Effective January 1, 1948)

"(a) Scope

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

accords to him the right to take a temporary vacancy and thereafter return to his regular assignment, and then stated:

"I've worked as Divn. Trainmaster at various times and it never changed my rate of pay when I returned to my regular assignment."

Your Board should keep in mind that the Division Trainmaster is wholly excepted from the provisions of the Dispatchers' Agreement, and that the Claimant, who occupied a position of Assistant Chief Dispatcher which is subject to the provisions of the Dispatchers' Agreement, has no right to move up on a temporary vacancy of a Division Trainmaster. The only way that Claimant Dugan could be used as a Division Trainmaster is to be appointed thereto by the Carrier on a permanent basis or to be selected by the Carrier to work in the place of a Division Trainmaster while the latter is absent from his position for any reason. It does not, and cannot, involve the exercise of seniority under Article 5(c) of the Dispatchers' Agreement, as was true in the instant case. For this reason, being used to relieve a Division Trainmaster from time to time and then returning to his regular position as Assistant Chief Dispatcher at the occupancy rate does not afford a basis for now contending that he continued on the Assistant Chief Dispatcher position, or "continue(d) or the position(s) on the division(s) where . . . now assigned," within the meaning of that language contained in paragraphs 2 and 3 of the Letter Agreement of December 6, 1947.

For the reasons fully stated in this Submission the instant dispute should be denied because it is without Agreement support; and is also without merit as a matter of equity, or otherwise.

All matters contained herein have been the subject of correspondence between the parties on the property, but have not been considered in conference between the parties on the property.

OPINION OF BOARD: As a result of the parties' agreement effective January 1, 1948, and their letter agreement dated December 6, 1947, the title of the position of the night Chief Dispatcher (Division Trainmaster) occupied by Claimant was changed to Assistant Chief Dispatcher covered by the Agreement. Under the terms of the letter agreement, Claimant continued at the position occupancy rate which was higher than the rate fixed for Assistant Chief Dispatcher. On December 7, 1960, he transferred to a temporary vacancy on a second trick train dispatcher position pursuant to Article 5(c) of the agreement. Upon termination of such temporary service and his return to his regular assignment, Carrier refused to pay him the occupancy rate of that position and paid him at the lower rate for Assistant Chief Dispatcher.

Carrier contends that its action was proper because under the terms of the letter agreement the occupancy rate was payable only so long as Claimant remained the incumbent of the position which entitled him to that rate and Claimant failed to continue on that position by exercising his seniority to obtain a different position pursuant to the provisions of Article 5(c).

It is clear from the record that in view of the exception of one Chief Dispatcher (Division Trainmaster) in each office from the agreement and the fact that Assistant Chief Dispatcher was covered by the agreement, primary objectives of the letter agreement included, as is also indicated by its terms,

the maintenance of the *status quo* so that the "present occupants should continue" on their night Chief Dispatcher (Division Trainmaster) positions with title changed to Assistant Chief Dispatcher and the establishment of a position occupancy rate for them by providing that:

"We do not wish to reduce the rate of pay of the present incumbents of positions of Division Trainmaster who are working nights, and so long as these individuals, who will have their titles changed to Assistant Chief Dispatcher, continue on the positions on the divisions where they are now assigned we do not propose to apply the Assistant Chief Dispatcher's rate set forth in the first paragraph above."

The letter agreement served to implement the effect of the agreement in the area and manner agreed upon by the parties. If it is to be regarded as an exception to, or in derogation of the agreement, then its terms must be narrowly confined by strict construction. In any event, nothing in the letter agreement denied Claimant the right under Article 5(c) of the agreement which covers him to leave his regular assignment temporarily to fill a temporary vacancy "in accordance with respective seniority" if there was competition for the temporary vacancy, and "upon termination of such temporary service, return to his regular assignment." Article 5(c) plainly indicates that engaging in temporary service thereunder does not result in the relinquishment of a regular assignment. As a result, while engaged on the temporary vacancy under Article 5(c) Claimant remained the incumbent of his regular assignment or position of Assistant Chief Dispatcher which had as an incident thereof the occupancy rate and did not, as claimed by the Carrier, fail to continue on such position. For these reasons, Claimant was entitled to the occupancy rate upon return to his Assistant Dispatcher position.

These views are also supported by the provisions of the letter agreement which state that when positions like those of Claimant are filled due to "temporary absence, or on rest and vacation days, the train dispatcher filling such position will be compensated" at the rate for Assistant Dispatcher which is lower than the occupancy rate. The clear implication from this clause is that the "temporary absence" of Claimant from his position was not a failure to continue on it. The term "temporary absence" is not defined or limited in the letter agreement and there is no reason why it should not include a temporary absence authorized by Article 5(c) of the parties' agreement.

Paragraph (b) of the claim suggests that the differential to which Claimant is entitled shall be continued by the Carrier "in full force and effect so long as said Letter Agreement remains in effect." Of course, discontinuance of this differential in favor of Claimant during the effective period of the letter agreement may be valid under certain circumstances which are not presented here.

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 violated.

AWARD

Claim sustained in accordance with the Opinion.

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.