



Award No. 15022

Docket No. TD-15791

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, 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 existing agreement between the parties, in particular Memorandum of Agreement dated December 6, 1947 and revised October 5, 1951, (reprinted at pages 27-28 of the existing agreement), because of its failure to provide relief service for the Chief Dispatcher position in the Carrier's Little Rock, Arkansas, train dispatching office, in accordance with the agreement from February 17, 1965 to and including March 27, 1965.

(b) That because of the violation of the existing agreement referred to in paragraph (a) hereof the Carrier now be required to compensate Train Dispatcher W. J. Raney one day's compensation at pro rata rate of Chief Dispatcher for each day of the period February 17, 1965, to and including March 27, 1965, excepting February 21, 28 and March 7, 14 and 21.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Honorable Board, and the same is made a part of this submission as though fully set out herein.

For the Board's ready reference the Memorandum of Agreement referred to in paragraph (a) above is here quoted in pertinent part:

"In affording Chief Train Dispatchers (now titled Division Trainmasters on this property and hereinafter referred to as 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. The train dispatcher so used shall suffer no loss in compensation in going to and returning from the Chief Train Dispatcher position."

The Carrier's Chief Train Dispatcher in its Little Rock, Arkansas, train dispatching office, Mr. J. F. Serrett, sustained an injury to one of the small

which you have attempted to present is valid for the reasons stated in the second paragraph above. Accordingly, your request and 'claim' are hereby respectfully declined.

Yours truly,

(s) B. W. SMITH"

Your Board will note that the Carrier informed the General Chairman in the third paragraph of its letter that Mr. Serrett's appointment as Chief Dispatcher ended on February 15, 1965, date he was granted an indefinite leave of absence and that the Carrier exercised its managerial prerogative in appointing Mr. Falkner to the position of Chief Dispatcher effective February 16, 1965.

7. The instant dispute was discussed in conference by the General Chairman and the Director of Labor Relations on June 28, 1965, and the decision given to the General Chairman in writing on April 12, 1965, was affirmed for the reasons set forth therein.

Under date of August 3, 1965, the Carrier was notified by the Executive Secretary, Third Division, of receipt of written notice of the Association's intention to file its ex parte submission in connection with the instant dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The Chief Dispatcher was injured and relieved of his duties. Claimant, Train Dispatcher Raney, was assigned as Chief Dispatcher and remained in said position until Trainmaster Faulkner was appointed to fill the vacancy until the Chief Dispatcher returned to work.

We hold that the Carrier erred when it failed to fill the temporary vacancy with an employe within the scope of the agreement and from the office where said vacancy existed.

The Claim is presented for one day's compensation at the pro rata rate of Chief Dispatcher. We cannot allow this type award. We hold that the Claimant is entitled to recover that amount which represents the difference between what he received as Train Dispatcher and what he would have received as Chief Dispatcher on the days in question.

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 was violated.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.

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