

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE DELAWARE AND HUDSON RAILROAD
CORPORATION**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that the Carrier violated, and continues to violate, Article 1 (b) of the Agreement by failing to properly classify two positions in the Oneonta, N. Y. office, now held by A. Burdick and H. L. Allen (one of these positions formerly held by H. R. France), covering the period from 4:00 P. M. to Midnight and from Midnight to 8:00 A. M., when they continued the positions at trick dispatcher's rate of pay, after the Agreement was signed on June 25, 1940, while the nature of the work was such that the positions should have been reclassified as Night Chief Dispatchers.

That these two positions be reclassified as Night Chief Dispatchers, establishing the rate of pay applicable to such classification, and that A. Burdick, H. L. Allen, H. R. France and all others affected be paid the difference of \$45.00 per month, while occupying the above identified positions, from June 25, 1940, until the positions are properly reclassified and the rate of pay of Night Chief Dispatcher is established, \$45.00 being the difference in rate of pay between trick train dispatcher and Night Chief Dispatcher.

EMPLOYEES' STATEMENT OF FACTS: At the time the Agreement between the Carrier and the Train Dispatchers was signed on June 25th, 1940, there was in existence two positions in the Oneonta, N. Y. office, with assigned hours from 4:00 P. M. to Midnight and from Midnight to 8:00 A. M., at that time held by H. R. France and A. Burdick, and now held by H. L. Allen and A. Burdick and paying a trick dispatcher's rate of pay.

The duties of these two positions and the authority vested in the incumbents are such as to require that they be reclassified as Night Chief Dispatchers.

POSITION OF EMPLOYEES: That it was the responsibility of the Carrier to properly reclassify these two positions in accordance with Article 1 (b) of the Train Dispatchers' Agreement and to apply the rate of pay of Night Chief Dispatcher.

There is in evidence an agreement between the parties to this dispute, which was signed on June 25th, 1940, the applicable provisions of which are as follows:

"Article 1

"Scope:

(a) The term 'train dispatcher' as hereinafter used shall be understood to include Night Chief, Trick, Relief and Extra Dispatchers.

source of assignment of supervisory authority and no authority of such a nature has been given incumbents of either of these two positions. There is, therefore, no possible reason for reclassification of either of the positions in question. It should be borne in mind that while organization claims these alleged grievances occurred June 25, 1940, no claim of such alleged grievances was brought to the attention of the Management until August 1, 1942, more than two years later, which does not indicate a very positive feeling on the part of the employees that their claim is a just one.

CONCLUSION

The Carrier has established that this claim is barred from handling by controlling agreement rule. Aside from this estoppel, there have been no Night Chief Dispatcher duties in the Oneonta Train Dispatcher's office since February 1, 1938. Existing conditions were known to the American Train Dispatchers Association June 25, 1940, when agreement was signed but no provision was made to include a position of Night Chief Dispatcher at Oneonta in rates of pay list made a part of the agreement as the organization was familiar with the fact there was no such position. Positions filled by claimant Train Dispatchers carried no Night Chief Dispatcher's authority, the nature of the duties assigned to these positions being only those of Train Dispatchers, and having none of the requisite authority and responsibility of a Night Chief Dispatcher, they cannot legally be reclassified under Article 1 (b) of the agreement as the assigned employees are performing service as Train Dispatchers and also carry Train Dispatcher payroll classification. Obviously, any change in their classification would be a direct violation of the controlling agreement.

The Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

The Carrier respectfully requests that the case be dismissed and the organization's claims be denied.

OPINION OF BOARD: The carrier and the organization entered into an agreement effective April 1, 1940. The provisions of the agreement pertinent to the merits of this dispute are as follows:

"ARTICLE 1

"(a) The term 'Train Dispatcher' as hereinafter used shall be understood to include Night Chief, Trick, Relief and Extra Dispatchers."

"(b) Where payroll classification does not conform to foregoing section, any employe performing service as specified therein shall be reclassified in accordance therewith." (Emphasis added)

The agreement contained the following:

"SCHEDULE OF RATES OF PAY FOR POSITIONS COVERED BY THIS AGREEMENT

Division	Location	Positions	Rates of Pay	
			Per Day	Per Month
Susquehanna	Oneonta	2 First Tricks	\$9.97	\$260.00
		3 Second Tricks	9.97	260.00
		2 Third Tricks	9.97	260.00
		1 Relief Dispatcher at rate of position relieved		"

Prior to February 1, 1938, there was a Night Chief Dispatcher at Oneonta. On that date the carrier "abolished" the position of Night Chief Dispatcher. We are satisfied from the record, however, that it was the designa-

tion of the position that was abolished rather than the position itself. In other words, we are satisfied that the functions of the position remained and have continued to the present time; but have been performed by trick dispatchers.

There being no agreement between the dispatchers and the carrier at the time it was, of course, within the carrier's prerogative to reduce the Night Chief Dispatcher to a trick dispatcher and still impose the duties of Night Chief Dispatcher upon him. This is in effect what was done.

The carrier contends that there is nothing in the agreement that prevents it from maintaining the status quo, at Oneonta, as of April 1, 1940—the effective date of the agreement. This contention is based on the fact that the schedule of rates of pay for positions covered by the agreement does not provide for a Night Chief Dispatcher as Oneonta while it does at Plattsburg. This would be a conclusive argument, we think, if it were not for the provisions of Article 1 (b).

That section is a definite limitation on the finality of listing contained in the Schedule of Rates of Pay. It provides that where payroll classification does not conform to the positions specified in Section (a) of the article "any employe performing service as specified therein shall be reclassified in accordance therewith." From this point we gather the carrier's argument, in effect, to be that to reclassify the position at Oneonta amounts to injecting into the agreement the Interstate Commerce Commission's definition of Night Chief Train Dispatcher. That effect is more apparent than real. The parties did not see fit to define "Night Chief Dispatcher." So we must look for a definition in custom and usage among carriers. We think it is a fair inference that the Interstate Commerce Commission's definition of Night Chief Dispatcher comports with the duties of that position as understood in custom and usage of carriers. We think it is clear from the record that the duties and functions pertaining to the position of Night Chief Dispatcher are being performed at Oneonta. It is the duty of the carrier to reclassify positions there so as to provide for one—particularly since it was found necessary to establish a third trick Side Wire position on September 8, 1941.

We do not think the demand of the organization that two positions be reclassified as Night Chief Dispatchers is warranted. There never was more than one there; and we think it is apparent from the record that one is now sufficient to handle the work pertaining to the position. At any rate, we do not think the organization has shown that more than one is necessary. Whatever may be said of the soundness of our construction of the contract, our conclusion is impelled by Award No. 1852. That involved a dispute between the same parties under the same contract and upon essentially indistinguishable facts. A different conclusion than we have reached would, in effect, overrule the decision in that Award. To do this would be subversive of the fundamental purpose for which this Board was created and for which it exists: settling of disputes. When a contract has been construed in an award the decision should be accepted as binding in subsequent identical disputes arising between the same parties under the same agreement.

The carrier invokes, as a bar to the claim, Article 8 (c) of the agreement which, so far as pertinent provides:

"No cases involving . . . alleged violation of this Agreement shall be considered after the expiration of sixty (60) days from the date . . . such alleged violation occurred."

We do not think the provision applicable to this situation. So long as the carrier declines to reclassify the position in accordance with Article 1 (b) it is guilty of a continuing violation of the agreement. See Awards Nos. 417, 444, 561, 595, 1223. However, Article 8 (c) does limit the right to reparation to the date of demand by the organization on the carrier for reclassification of the position of Night Chief Dispatcher.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 carrier is violating the agreement.

AWARD

Claim sustained to the extent of reclassification of one Night Chief Dispatcher. Reparation allowed only from date demand for reclassification was made on the carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1944.