

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
SOUTHERN RAILWAY SYSTEM**

DISPUTE.—"Contention of Train Dispatcher that, in accordance with the provisions of the current Agreement on Rules, the names of all those holding seniority rights as Train Dispatcher in the Birmingham (A. G. S.) office and in the Hattiesburg (N. O. & N. E.) office (both being under the jurisdiction of one superintendent, should be shown on one common roster, the names dovetailed according to seniority dates, and that the rights of all those shown thereon extends to all train dispatcher positions under the jurisdiction of the one superintendent."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The Carriers and the employees involved in this dispute are respectively Carriers and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As result of a deadlock, Paul Samuell was called in as Referee to sit with this Division.

STATEMENT OF FACTS.—The Alabama Great Southern Railroad Company (A. G. S.), is a Corporation operating under a Charter. Its line extends generally from Chattanooga, Tennessee, to Meridian, Mississippi, and it is claimed by the petitioner that over fifty-six per cent of its stock is owned by the "operating Department—Southern Railway System (Western Lines)." The offices of the Superintendent and Chief Train Dispatcher for this Railroad are located at Birmingham, Alabama.

The New Orleans and Northeastern Railroad Company (N. O. N. E.) is a Corporation operating under a Charter, its line extending generally from Meridian, Mississippi, to New Orleans, and the Petitioner claims that more than ninety-nine per cent of the stock of this Company is owned "by the Operating Department—Southern Railway System (Western Lines)." Prior to October 1, 1931, the Superintendent's office of this Company was located at Hattiesburg, Mississippi. On that date the General Superintendent of the A. G. S. and the N. O. N. E. issued the following Order: "Effective this date: J. G. Clements, in addition to his duties as Superintendent of Alabama Great Southern Railroad Company, is appointed Superintendent of the New Orleans and Northeastern Railroad Company, headquarters Birmingham, Alabama. Vice B. F. Langford."

The Southern Railway System is not a Corporation. This so called System is used for the purpose of identifying a number of Railroad Corporations which are separate Corporations but are connecting, and have been divided into three groups called the Eastern Lines, Central Lines and Western Lines, the latter consisting of twelve different lines including the A. G. S. and the N. O. N. E.

On the cover page of an Agreement dated September 1, 1929, the following language is used: "AGREEMENT between Southern Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; Georgia Southern and Florida Railway Company; Harriman and Northeastern Railroad Company; and Northern Alabama Railway Company; and Train Dispatchers Covered by Article 1 of this Agreement as Represented

by the American Train Dispatchers' Association." At the end of the Agreement, on page 10, we find the following language:

"For the Employees: F. W. Stange, General Chairman, American Train Dispatchers' Association.

"For the Companies: H. W. Miller, Vice President. Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company, Georgia Southern and Florida Railway Company, Harriman and Northeastern Railroad Company, and Northern Alabama Railway Company."

Until June 1, 1932, the office of Chief Train Dispatcher of the N. O. N. E. was at Hattiesburg, and the office of the Chief Train Dispatcher of the A. G. S. was at Birmingham, on which date the Chief Train Dispatcher's position at Hattiesburg was abolished, and thereafter the Chief Dispatcher's office of both Companies was located at Birmingham, and the positions were held by the same individual. The former Chief Train Dispatcher at Hattiesburg was privileged by the Management of displacing the Chief Train Dispatcher at Birmingham or exercising his rights as a Trick Dispatcher. He chose to and did displace a Trick Dispatcher at Hattiesburg.

On June 1, 1932, the position of Trainmaster on the N. O. N. E. was abolished, and the incumbent, Mr. Tipton, was privileged by the Management of displacing Mr. McLarn, the Trainmaster on the A. G. S. or exercising his rights as a Conductor on the N. O. N. E., from which he had been promoted and on which he held rights. Mr. Tipton displaced Mr. McLarn at Birmingham, who in turn was given the right to displace a junior employee in the A. G. S. office, and as the result, Mr. Stange, who was the General Chairman of the Brotherhood, the junior regularly assigned Dispatcher in the A. G. S. office, was displaced and was denied the privilege of displacing anyone his junior in the Hattiesburg office, thus leaving Mr. Stange without work.

Mr. Tipton (from the N. O. N. E.) displaced Trainmaster McLarn (on the A. G. S.) who had been Chief Train Dispatcher on the A. G. S. prior to his promotion to Trainmaster on the N. O. N. E. At the time of displacement of McLarn by Tipton, the Chief Train Dispatcher's position on the A. G. S. was and is now filled by Mr. Buchanan, who is about six years junior in seniority rights to McLarn. McLarn was not permitted to return to the position of Chief Train Dispatcher from which he had been promoted.

At the time the position of Chief Train Dispatcher on the N. O. N. E. was abolished at Hattiesburg, the incumbent, Mr. Armistead, was privileged to either displace the Chief Dispatcher at Birmingham or exercise his displacement rights as a Trick Dispatcher on the N. O. N. E. and he elected to and did the latter. It is to be borne in mind that the positions of Chief Train Dispatcher and Trainmaster are not covered by the Agreement in dispute.

By reason of the Order made on October 1, 1931, above quoted, whereby Mr. Clements was appointed Superintendent of the N. O. N. E., in addition to his duties as Superintendent of the A. G. S., with headquarters at Birmingham, it is contended by the Petitioner and emphatically denied by the Respondent Carrier, that under Article 4 (b), hereinafter quoted, the A. G. S. and the N. O. N. E. fell under the jurisdiction of one Superintendent, and that under Article 4 (e) and 4 (m), McLarn should have been permitted to displace a Dispatcher in the Hattiesburg office, and likewise, Mr. Stange should have been permitted to displace a junior Dispatcher at Hattiesburg.

It further appears from the record in this case that in 1923, when an Agreement existed between the same parties containing the same language as Article 4 (b), 4 (e), and 4 (n), as hereinafter quoted, under date of March 30, 1923, the then President of the Brotherhood advised H. W. Miller, Vice-President of the various Companies on the Western Lines as follows:

"Please be advised that as a result of an election held in compliance with the laws of this Organization, Mr. F. W. Stange, 232 West 2nd Street, Arlington, Birmingham, Ala., has been elected General Chairman of the American Train Dispatchers' Association for the Southern Railway System, and as such is the duly authorized and designated representative of a majority of the Train Dispatchers in the employ of the said *carriers*." [Italics ours.] "Please be further advised that R. L. Rodgers, 473 Meeting Street, Charleston, S. C., has been elected Assistant General Chairman of

the American Train Dispatchers' Association for the Southern Railway System."

Mr. Miller's reply of April 2, 1923, was in part as follows:

"For your information I beg to advise that the Southern Railway System has no corporate identity but is composed of several lines, each of which is a separate corporation. I assume it is your intention to advise us that Mr. Stange and Mr. Rodgers have been elected General Chairman and Assistant General Chairman, respectively, of the several lines composing Southern Railway System but I would be glad to have you advise as to this."

to which the President of the Organization replied under date of April 4, 1923, as follows:

"I have your favor of April 2nd, in which you state: 'I assume that it is your intention to advise us that Mr. Stange and Mr. Rodgers have been elected General Chairman and Assistant General Chairman, respectively, of the several lines composing Southern Railway System but I would be glad to have you advise as to this.'"

"Your assumption is correct."

It further appears from the record that several years prior to 1931, and before any agreement existed between the parties, the Northern Alabama Railroad, and recognized as a part of the Southern Railway System, was placed under the jurisdiction of the Superintendent of the Birmingham Division of the Southern Railway Company, also recognized as a part of the Southern Railway System. These two Railroads were separate corporate entities. The Dispatchers on the Northern Alabama were transferred from Sheffield to Birmingham and the seniority roster of the Dispatchers of the Alabama Northern and the Southern Railway Company were consolidated, seniority dates dovetailed, although the Dispatchers on each Railroad continued to handle their former respective territories. Mr. Stange holds Train Dispatcher seniority date as of April 23, 1912, and has been out of work since June 1, 1932, while Mr. W. A. Stephenson, with Train Dispatcher seniority date as of February 1, 1918, is working full time at the Hattiesburg office.

The following is also introduced as an Exhibit into the record in this case (which appears on page 3, Book of Rules of the Operating Department, Southern Railway System, effective August 1, 1923):

"SOUTHERN RAILWAY SYSTEM.—Southern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Co.; Cincinnati, Burnside & Cumberland River Railway Company; The Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; New Orleans & Northeastern Railroad Company; Harriman & Northeastern Railroad Co.; Northern Alabama Railway Co.

"The rules herein set forth govern the railways operated by the 'Southern Railway System.' They take effect August 1, 1923, superseding all previous rules and instructions inconsistent therewith.

"Special instructions may be issued by proper authority.

"Whenever and wherever the word Railway is used in these rules, it is intended to cover any railroad or railway company being operated as a part of Southern Railway System, or any subsidiary line, the management of which may by proper order make the rules effective thereon.

"H. W. MILLER, Vice President."

It further appears from the record that an Agreement between the Southern Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; The New Orleans Terminal Company; Georgia Southern and Florida Railway Company; St. Johns River Terminal Company; Harriman and Northeastern Railroad Company; Cincinnati, Burnside and Cumberland River Railway Company; Northern Alabama Railway Company; and The Employees Classified Herein as Represented by the Brotherhood Railroad Signalmen of America, is in effect, and that the Carriers above mentioned are a part of the Southern Railway System, and that in said Agreement Rule 5 (a) provides as follows:

"Seniority rights of employees to new positions or vacancies will, unless otherwise agreed, be restricted to the territory over which one signal

and electrical engineer has jurisdiction. When force is reduced, an employee, if no new position or vacancy is open, will have the right to displace only the employee of the same class with the least seniority rights. An employee displaced or reduced will have the right to displace the employee with the least seniority rights in the next lower class in which he previously held seniority rights, and will regain such rights, and will retain his seniority rights in the class from which demoted."

and that there are certain Signalmen and other employees within the scope of that Agreement who work and have seniority rights in overlapping territory of the various Carriers hereinabove named.

The Rules involved in this dispute are as follows:

ARTICLE 1.—"The term 'Train dispatcher' as herein used shall be understood to include trick, relief, and extra dispatchers."

ARTICLE 4 (b).—"Train Dispatchers' seniority shall be limited to one superintendent's jurisdiction."

ARTICLE 4 (e).—"Train dispatchers who have been heretofore or may hereafter be promoted to positions not covered by these rules, either with the carrier or organization, shall retain and accumulate seniority, such seniority to be exercised only on the seniority district where last assigned to a position covered by these rules and under the following conditions:

"(1) Those who desire to return to schedule positions for no reason other than their own desire may return to positions to which assigned at time of promotion, provided they have not been absent from such positions for a period of more than one year; if absent for a period of more than one year, they will be placed on the extra list and may then exercise seniority by bidding on pending or subsequent vacancies or new positions.

"(2) Others who desire to return to schedule positions account of demotion, abolishment of position, or similar causes beyond their control, who have not been out of such positions for more than one year, may return by exercising their rights to schedule position to which assigned at time of promotion; when out of a schedule position for a period of more than one year, shall first displace only the junior regularly assigned dispatcher, whether such junior be assigned to regular trick or relief; after so placing themselves may thereafter exercise seniority to subsequent vacancies or new positions."

ARTICLE 4 (n).—"Men displaced by reason of return of dispatchers to positions covered by this schedule shall have the privilege of exercising seniority in accordance with the rules of this agreement."

ARTICLE 4 (m).—"When, for any reason, two or more dispatchers' offices are consolidated, seniority of such offices shall be pooled. Train Dispatchers affected shall have prior rights to corresponding positions in these consolidated offices, carrying their seniority with them. After such rights have been exercised, seniority rules will govern. If consolidation results in force reduction, if qualified, oldest men shall have prior rights to positions remaining."

POSITION OF EMPLOYEES.—(A) That under Article 4 (b), the seniority rights of all Train Dispatchers under the jurisdiction of one Superintendent, i. e., A. G. S. and N. O. N. E., automatically became coextensive with the jurisdiction of the one Superintendent who was appointed as Superintendent of both Railroads on October 1, 1931, and that the seniority rosters of the Train Dispatchers in the Birmingham (A. G. S.) office and in the Hattiesburg (N. O. N. E.) office should have been merged, and the seniority standing of all dovetailed so that when the N. O. N. E. Trainmaster was permitted to displace the A. G. S. Trainmaster, the latter or others affected should also have been permitted to exercise displacement rights in either of the two dispatching offices under the jurisdiction of one Superintendent.

(B) That inasmuch as the dispatching of trains over the N. O. N. E. and the A. G. S. have been under the jurisdiction of one Superintendent since October 1, 1931, and under one Chief Dispatcher since June 1, 1932, that such action constitutes a merging of the two Railroads for all practical purposes, and, therefore, the seniority rosters of the Train Dispatchers should be dovetailed into one Roster.

(C) That since the right to displace junior employees under the jurisdiction of one Superintendent has been granted to Trainmasters and Chief Dispatchers,

and also to Signalmen, regardless of the so-called separate "corporate entities", that the same rights should be given Train Dispatchers under Rule 4 (b).

(D) That the merging of the Northern Alabama Railroad with the Birmingham Division of the Southern Railway is an admission on the part of the Carrier of a recognized practice heretofore indulged in by the Carrier, but now disputed by the Carrier in another Railroad but under practically the same state of facts.

POSITION OF CARRIER.—(A) That the seven Carrier Companies in this Agreement are separate corporate entities, and that for "operating convenience alone" are operated under a common management, and for convenience the Carriers embraced in such contract are known as "Southern Railway System"; that the two Companies involved herein are entirely separate and distinct and make separate reports to the Interstate Commerce Commission, and have separate Boards of Directors, Stockholders, etc.

(B) That the schedule agreement in dispute is in truth and fact a separate agreement between the seven different Railroads and their respective Train Dispatchers.

(C) That the Chairman of the petitioning Organization a number of years ago so recognized the fact that each of the seven railroads were acting for themselves and that the officers representing the employees represented such employees on each separate railroad.

(D) That the Dispatchers on the A. G. S. are still located at Birmingham, and the Dispatchers on the N. O. N. E. are still located at Hattiesburg just as they have always been, and that the seniority rights of the employees on these two Railroads are separate and distinct.

(E) That the appointment of Chief Train Dispatcher or Trainmaster is not covered by Agreement and that the Petitioner has no right to interfere with the appointments so made even though it may affect, as the result of bumping, the employees who fall within the scope of the Agreement.

(F) That Dispatchers on the A. G. S. do not dispatch trains on the N. O. N. E., and vice versa, N. O. N. E. dispatchers do not dispatch trains on the A. G. S., even though they report to their respective Chief Dispatcher who happens to be the Chief Dispatcher for both Companies.

(G) That Mr. Clements' superintendency on the A. G. S. is one position and that he is another Superintendent on the N. O. N. E.; that his jurisdiction is entirely separate and distinct as is the source of his authority.

(H) That there is no violation of Rule 4 (b); that the Rule is one of "limitation of extent"; that because of the provisions of Article 4 (m), which specifically covers consolidations, the interpretation contended for by the employees is without merit or justification; that when Rule 4 (b) is properly interpreted, the words "shall be limited" have but one meaning, i. e., that it "shall not extend beyond."

(I) That unless and until action would be taken to bring the matter within Article 4 (m), the Petitioner is without right to insist that the seniority lists be merged and dovetailed; that to comply with Petitioner's demands would mean that the individual rights of N. O. N. E. Dispatchers at Hattiesburg would be jeopardized, and that since these Dispatchers have protested such action that the Respondent is duty-bound to protect their rights.

For convenience and brevity, reference will be made to the paragraphs identified from (A) to (I) inclusive in the "Position of Carrier."

With reference to (A) and (B), while it may be true that the two companies involved herein are entirely separate and distinct and make separate reports to the Interstate Commerce Commission and have separate Board of Directors, Stockholders, etc., yet the contract between the parties bears the signature of seven different Railroad Companies, all of which are represented by one Vice-President, and there is nothing in the contract to indicate that this contract is a separate contract between the respective Railroad Companies and the Dispatchers' Organization, and in the absence of any specific provision, it is to be assumed that the contract is joint.

The fact that in 1923 the President of the Dispatchers' Organization advised the Vice-President of the various companies that the Vice-President's assumption was correct that Mr. Stange and Mr. Rodgers were elected General Chairmen of the several times has no probative forces as far as this dispute is concerned.

While it may be true that the dispatchers on the A. G. S. and on the N. O. N. E. are still located at Birmingham and Hattiesburg, respectively,

just as they have always been and that the seniority rights on these two railroads are separate and distinct, yet the question to be decided is whether, by reason of the action of the carrier, the two railroads, so far as it pertains to the seniority rights of the employees, have not been consolidated. It is the opinion of the Referee that there has been such a consolidation of seniority rights.

As to (E), the Referee is of the opinion that because of the conclusions reached in this Award, the petitioner has not interfered with the appointments of Chief Train Dispatcher or Train Master insofar as it concerns the agreement between the parties.

With reference to (F), the fact that the dispatchers on the A. G. S. do not dispatch trains on the N. O. N. E., and vice versa, has no bearing on the point as to whether or not the seniority rights on the two railroads have not been consolidated by reason of the agreement existing between the carrier and employees and the subsequent action of the carrier.

With reference to (G), the Referee is of the opinion that Mr. Clements is in truth and fact, and for all practical purposes, the Superintendent of the A. G. S. and the N. O. N. E., which, for management and operating purposes, is now placed under the jurisdiction of one Superintendent.

Doubtless, the word "limited" in Article 4-(b) is awkwardly used, yet the natural construction or interpretation to be placed on this word is "coextensive." To hold otherwise would lead only to confusion.

AWARD

The seniority roster of the Birmingham A. G. S. office and the Hattiesburg N. O. N. E. office will, therefore, be merged into one common roster and the names dovetailed according to seniority, and the seniority of all those shown thereon shall be extended to all schedule positions under the jurisdiction of one superintendent, and Mr. McLarn shall be assigned to the position held by the junior regularly assigned Train Dispatcher on this consolidated roster. This Award is made, however, with the understanding that in case different superintendents, at any future time, shall be appointed on the N. O. N. E. and the A. G. S., or in case either the N. O. N. E. or the A. G. S. is withdrawn from the Southern Railway System, then and in such event any employee affected by this Award shall have the right to have his seniority rights restored in the same manner as though this Award had never been made.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 27th day of January 1936.

DISSENT

The undersigned dissents from a number of the statements of facts, conclusions, and the award in its entirety, in this case for the following reasons:

1. That certain portions of statement of facts are erroneous, being drawn from unsupported allegations of the petitioner, some of which are specifically denied, and others are by implication denied by the respondent railroads.
2. That other portions of the statement of facts introduce statements, documents, or other material irrelevant and extraneous to the issues in this case.
3. That the conclusions drawn from the portion of the facts excepted to are per se erroneous and unwarranted.
4. That the award is (a) violative of seniority rights of employees of the railroads involved in this dispute; (b) that it is violative of the rights and prerogatives of the owners and the management of each of the railroads involved in this dispute; (c) That it imposes a condition impossible of fulfillment; (d) that it exceeds the authority of the Board.

With respect to the "Statement of Facts":

The last paragraph on page two is substantially a reproduction from the petitioner's submission. The last two sentences thereof are nearly verbatim quotations. The position of chief dispatcher is an official one, and is not subject to the agreement with the Dispatchers' Organization, or with any other organization. Appointments to official positions are made by the management at its own discretion and without necessary regard to seniority. That that

course was followed in the instance here referred to is amply demonstrated by the following circular of appointment, issued by the Superintendent of the New Orleans & Northeastern Railroad, dated June 1, 1932, and quoted by the respondent in its submission:

"Effective this date Mr. C. H. Buchanan is appointed Chief Dispatcher with headquarters at Birmingham, Ala., vice Mr. J. O. Armistead, assigned to other duties." (Armistead was the former chief dispatcher of the N. O.

& N. E. at Hattiesburg.)

Upon the abolition of his position of chief dispatcher at Hattiesburg, Armistead exercised his seniority rights under the provisions of the agreement. If he had not had such rights, there is no way in which the management could have conferred them upon him.

The first and second paragraphs on page three are also substantially the text of the petitioner's submission. They deal with the official positions of train master on the N. O. & N. E. and the train master on the A. G. S. That the purpose of the allegations as they are framed, is to draw an analogy between these official positions and the subordinate positions of dispatcher is clearly shown by the last sentence in the second paragraph on page three, "McLarn was not permitted to return to the position of chief dispatcher from which he had been promoted." McLarn held an official position of train master. The management in its discretion did not see fit to appoint him chief dispatcher; whereupon McLarn, exercising the seniority rights that he had under the contract, acquired a position as dispatcher.

The third paragraph on page three is virtually a repetition in substance of the last paragraph on page two, and therefore is to the same extent erroneous and misleading.

The last paragraph on page four draws attention to the fact that several years prior to 1931, and before any agreement existed between the parties, the dispatching office of the Northern Alabama Ry., formerly located at Sheffield, Ala., was moved to Birmingham, Ala., where was located the dispatching office of the Birmingham Division of Southern Railway, and that the seniority roster of the dispatchers of the Northern Alabama and Birmingham Division of the Southern Railway were consolidated. The record shows that this removal took place in 1911, and that the first agreement between the American Train Dispatchers Association and the carriers involved was in 1921. Presumably, this statement is introduced as a statement of fact to imply an analogy between the consolidation of the dispatching offices of the Northern Alabama Ry. and the Southern Railway with the instant case; this presumption is strengthened by the fact that the last sentence of the paragraph (last paragraph, page four) deals entirely with the situation in the instant case, and has no relation to the remainder of the paragraph; that there is no analogy must be apparent from the fact that in 1911 there was an actual consolidation at Birmingham of the dispatching offices formerly located at Sheffield and Birmingham. Furthermore, it is significant that ten years before there were any rules covering dispatchers on these properties the management did at that time, upon the consolidation of two dispatchers' offices, consolidate the seniority rosters as now provided for in Rule 4 (m) of the present agreement—a rule that is not invoked by the petitioner in the instant case.

There is introduced on page five a reproduction of one of petitioner's exhibits in this case which purports to be copied from page three, "Book of Rules of the Operation Department, Southern Railway System, Effective August 1, 1923." That this exhibit is wholly irrelevant to the case here under consideration I think is amply sustained by the fact that no opportunity was found to draw upon it in the conclusions beginning at the top of page nine.

There is next introduced on page five reference to an agreement between the several railroad companies known as Southern Railway System and the Brotherhood of Railroad Signalmen of America, and Rule 5 (a) from the said agreement is quoted. There is no conclusion drawn from this "statement of facts." If it is relevant or of probative value in determining whether the employees in dispatching office of one carrier should be required against their will to merge their seniority with employees in dispatching office of another carrier, then the writer asserts that of equal relevancy and probative value is the fact that separate and distinct agreements exist between each of the carriers involved in this case and their respective employees in engine and train service, visual evidence of which was laid before the Referee during consideration of this case.

Reference is here made to the conclusions beginning at the top of page nine. In the first paragraph it is stated that the statements in paragraphs (A) and (B) of the position of the carrier may be true with respect to the separateness of the two companies involved in this case but that there is nothing in the contract to indicate that it is a separate contract between the respective railroad companies and Dispatchers' Organization, and in the absence of any specific provision it is to be assumed that the contract is joint. The author of these conclusions is an eminent jurist for whose learning and opinion in legal matters the writer has great respect; but inasmuch as the Agreement referred to was drawn by laymen for the guidance and understanding of laymen, he ventures the opinion that the form in which the Agreement is drawn and executed is of strong probative force in reaching the conclusion that it is several and not joint in the absence of an assertion in specific language within the agreement that it is the one or the other. By its very nature there would be no point in making it joint *and* several. Coupled with the further fact that in 1923 the President of the Dispatchers' Organization recognized the severalty of the Agreement in an exchange of correspondence with the management (See paragraph (c) page eight), it becomes clear beyond question that both of the parties of this agreement regarded it as a several and *not* a joint one.

In the third paragraph on page nine, the conclusion is reached that while it may be true that the dispatchers on these two railroads are still located at Birmingham and Hattiesburg, "just as they have always been", and "that the seniority rights on these two railroads are separate and distinct", that there has been a "consolidation of seniority rights" by reason of the action of the carrier. To the writer, this expression is lacking in clarity. It can be stated with assurance that the two railroads have not been consolidated. What action of the carrier has consolidated them "so far as it pertains to the seniority rights of the employees" is not explained.

In the penultimate paragraph on page nine, the Referee expresses the opinion that Mr. Clements is in truth and in fact the Superintendent of the A. G. S. and N. O. & N. E. This is true only to the extent that the position of the Superintendent of the N. O. & N. E. and the position of the Superintendent of the A. G. S. now repose in the same person. Mr. Clements was Superintendent of the A. G. S. before he was appointed Superintendent of the N. O. & N. E., which with other evidence of record shows clearly that being Superintendent of the one gave him no authority over the other.

In the last paragraph, page nine, the conclusion is reached that the word "limited" in Article 4 (b) (of the Agreement) is "awkwardly used", and the adjective "co-extensive" is substituted for the verb "limited." This fits the interpretation offered by the petitioner to support his contention in this case. There is nothing in the context of Article 4 (b) or elsewhere in the agreement to suggest that the language used does not express the true intent of the parties to it.

In a letter addressed to the Chairman of this Third Division, on January 26, 1935, the Honorable Paul Samuel, Referee, expressed the opinion that the dispute should be settled "on the territory rather than require a final decision of the Referee." He said further:

"I have come to the conclusion * * * that the rules relied upon by both parties * * * were not drawn to cover the circumstances which are involved in this dispute."

With this I do not wholly agree, but I submit that if the Referee found that the rules did not support either party's contention he was exceeding his authority when he undertook to change the language of the rule, in order to find support for the contention of one party.

The award violates the seniority rights of the employees of the N. O. & N. E. R. R. by requiring them to share their rights—to their great disadvantage—with employees of the A. G. S. R. R.

In the award in the case in Docket TE-68 of the Third Division, National Railroad Adjustment Board, the Honorable Paul Samuel, Referee in that case as well as in the instant one, expressed the following view:

"The background of all agreements is the right of seniority, and the right of seniority should prevail unless a specific agreement runs to the contrary."

In the instant case the employes of the N. O. & N. E. sought and retained employment in the dispatching office of that carrier with the expectation that the seniority acquired would inure to them and to them alone.

In the consideration of this case there was cited before the Referee the decision of the Court of Appeals of Kentucky in the case of *Piercy v. L. & N. Ry. Co.*, in which the court said in part:

"Agreements between organizations of employes and their employers are designed primarily for the individual benefit of the members of the organization and not to place it within the power of the organization to change or modify the contract at its pleasure so as to affect the individual rights of its members.

"If the right of seniority may be changed or waived or otherwise dispensed by the act of a bare majority of an organization to which the one entitled thereto is a member, it would be builded upon a flimsy foundation of sand which might slip from under him at any time by the arbitrary action of the members, *possibly to serve their own selfish ends in displacing him.*" (Italics added.)

The circumstances in that case were similar to those in the instant case and involved the same principle.

The award is violative of the rights and prerogatives of the owners and the management of each of the railroads in that it requires action contrary to the express terms of the agreement existing between the respective railroads and their respective employes.

That portion of the award requiring that in the event "different superintendents at any future time shall be appointed on the N. O. & N. E. and A. G. S., or in case either N. O. & N. E. or A. G. S. is withdrawn from the Southern Railway System, then and in such event any employe affected by this award shall have the right to have his seniority rights restored in the same manner as though this award had never been made", is impossible of fulfillment. It implies that any employe who does not elect, in such event, to have his "seniority rights restored" may retain what he has. Manifestly, if one employe elects to require restoration, one or more other employes will be affected and the restoration could not be accomplished without their acquiescence.

In this last provision the award goes beyond the claim stated by the petitioner to be the basis or cause of the dispute. This Board has no authority to make any award that goes beyond the settlement of the dispute before it for adjudication, except that it may require some action on the part of one or both parties necessarily related to the settlement of the dispute. The last provision of this award is not of that nature. It seems rather to be an empty gesture to propitiate the employes of the N. O. & N. E., for the loss of their seniority rights, by holding forth the prospect of some day regaining *that of which they are now deprived.*

(S.) GEO. H. DUGAN.

The undersigned concur in the above dissent:

R. H. ALLISON,

A. H. JONES,

L. O. MURDOCK,

(Member Cook absent.)

Chicago, Illinois, January 30, 1936.