

Award No. 187
Docket No. TD-78

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE BALTIMORE AND OHIO RAILROAD COMPANY**

DISPUTE.—“Claim by the Train Dispatchers that, by reason of being displaced by Mr. G. J. Williams from his position as Third Trick Chief Dispatcher (Claimed by the Carrier as being an official position), Mr. E. A. Dickson was not entitled, under the rules of the Agreement, to displace Mr. E. H. Rupkey from his position as regularly assigned relief dispatcher in the Dayton, Ohio, office; that Mr. Rupkey, and Mr. R. W. Hoskinson, whom Mr. Rupkey thereupon displaced, be restored to their respective positions and compensated for any and all monetary loss suffered by them.”

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

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.

RULE INVOLVED.—Article 5 (d):

“Train Dispatchers accepting official positions with either the railroads covered by this agreement, or the American Train Dispatchers’ Association, will not forfeit seniority rights. If displaced by senior employee, or position is abolished, they may exercise displacement rights on any position their seniority entitles them to, provided they do so within ten days.

“This does not apply to those who are disqualified for any cause, or who voluntarily relinquish such official positions. Under these conditions they will be permitted to exercise their seniority either by displacing the junior regularly assigned train dispatcher or going on the dispatchers’ extra list and thereafter exercising their full seniority by bidding on vacancies.”

FACTS.—G. J. Williams, with Train Dispatcher’s seniority date June 16, 1914, was promoted to Division Operator (an official position) July 1, 1926, and worked in that capacity until September 1, 1934, when that position was abolished.

E. A. Dickson, with Train Dispatcher’s seniority date November 21, 1913, was promoted to Third Trick Chief Dispatcher (an official position) in February of 1932. His promotion due to a vacancy caused by the death of another Chief Trick Dispatcher.

When the position of Division Operator was abolished September 1, 1934, Williams was placed on position of Third Trick Chief Dispatcher, displacing Dickson, who was permitted to displace E. H. Rupkey, seniority date March 21, 1914, under the latter’s protest. Rupkey displaced Hoskinson, his junior.

Employes contend that the Rule is so clear that any argument which attempts to place a construction different from that contended for by them is specious and misleading; that Train Dispatchers who accept official positions will not forfeit seniority rights, but such rights are retained and accumulate as dispatchers while filling official positions, but in the event such official is displaced by a senior employe, i. e., by someone who has a longer continuous service with the railroad, or if his position is abolished, he may displace any time a dispatcher his junior; that the words “if displaced by senior employe”

were deliberately placed in the Agreement to take care of just such a situation as obtains in this dispute; that the word "employe" does not mean "official," but means "employe" taken literally; that this is not a standard Rule, but was adopted for the purpose of preventing the management from supplementing senior officials with junior officials and then force the former back into the ranks, and by such devious methods, evade the seniority rule, and thus make the dispatchers' ranks a dumping ground for officials who might be displaced by men with less experience and seniority.

In further support of this contention, the employes assert that prior to the adoption of Article 5 (d), the Rule in effect was:

"Train dispatchers accepting official positions with either the railroads covered by this agreement or the American Train Dispatchers' Association will not forfeit seniority rights. This does not apply to those voluntarily relinquishing official positions; in such cases they will rank as the youngest train dispatchers on the superintendent's division from which promoted."

and that under such old Rule the management was permitted to return to dispatchers' ranks, with full displacement rights, any official whom management cared to displace irrespective of the record of continuous service.

The carrier contends that the term "employe" as used in Article 5 (d) means "an employe who *holds rights under that agreement*"; that the rule was never intended to prejudice the right of the management to select its officials, on the contrary it was for the purpose of insuring their full seniority rights in the event such services were no longer required.

Brevity in railroad parlance, especially in contracts of this character, causes much argument, as exists in this case. There is a difference in meaning between the word "employe" and the words "employees who hold rights under this agreement," especially when it refers to railroads with its thousands of employes. The word "employe" used in a general sense naturally means any employe, while "employees who hold rights under this contract" means employes under certain limitations. This Division is without right to place limitations or modifications in contracts unless vagueness, obscurity or absurdity of meaning leaves no alternative. In this dispute there appears to be no occasion for such treatment. A comparison of the rule in effect prior to the present rule is quite persuasive. Undoubtedly there was a reason for the change, and while the disputants disagree as to the incidents which led to such changes, this Division finds, as the result of the rule, that no limitation as contended for by the carrier, was placed upon the word "employe," although that was the time to have done so.

The rule is not regarded as standard, and this Division feels impelled to apply the meaning to the words and expressions in their ordinary and literal sense.

AWARD

Claim of employes is sustained.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Ill., this 28th day of January 1936.