

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Protest against displacement of Trick Train Dispatcher L. T. Smith from his regular assigned position in the Atchison, Kansas office by Mr. E. R. McHugh, Division Trainmaster at that point, on or about November 26, 1937, and claim of Mr. L. T. Smith for losses from date of displacement to date of return to Atchison office on or about April 20, 1938, as follows:

- "1. A train dispatcher's day for each day consumed in transferring to Monroe, La., breaking in, learning the road to qualify for position that division, and for each day consumed in transferring back to Atchison.
- "2. Refund of cost of transferring household goods Atchison to Monroe and returning to Atchison.
- "3. Refund for cost of Pullman, lodging, meals and any other necessary expense while making these transfers, breaking in, learning the road and for such days as required to work away from his home headquarters at Monroe, La."

EMPLOYEES' STATEMENT OF FACTS: "About July, 1935, there was a reduction in the number of train dispatchers' positions on the Omaha and Northern Kansas Divisions, which resulted in displacing E. R. McHugh and L. T. Smith from their assigned positions as train dispatcher and each exercised their seniority rights to displace the junior regularly assigned train dispatcher on the system.

"McHugh placed himself as trick train dispatcher in the Wagstaff, Kansas office on the Central Kansas Division and Smith placed himself at Pueblo on the Colorado Division. Each retained Home Division seniority rights on the Omaha Division under Rule 10 (d) reading:

'Train dispatchers who have been displaced on their home division by reason of force reduction or by senior dispatchers, and placed themselves on other division or reverted to extra work, subsequent to January 1, 1928, shall be considered as a part of the force of such home division, and eligible to make application for any position therein under the provisions of paragraph (e) of this rule. Failure to make application for or to accept assignment on home division when their seniority will entitle them to do so will cause forfeiture of their rights conferred under this section.'

Seniority date of E. R. McHugh—May 10, 1913

Seniority date of L. T. Smith—October 15, 1916.

expenses incurred for Pullman, lodging, meals and "any other necessary expense" while making these transfers, breaking in, learning the road, and for such days as required to work away from his home headquarters at Monroe, La.'

"The carrier takes exception to the presentation to your Honorable Board of items 2 and 3 for the reason that neither of them have heretofore been presented to the Carrier, hence your Honorable Board cannot make monetary awards to claimants on claims that have not been presented to the Carrier in the manner prescribed by the agreement governing working conditions of employees of the Carrier.

"All matters herein referred to in support of Carrier's Position have been the subject of correspondence or discussion with the Employees' Committee." (Exhibits not included.)

OPINION OF BOARD: The facts, not in dispute, the rules of the working agreement thought to have application, and the contentions of the parties, are set forth above. It is agreed that the meaning of rule 14, presently to be quoted, as applied to the facts, is controlling.

Briefly, it appears that one McHugh and claimant, train dispatchers at Atchison, on the Omaha-Northern Kansas Division, held seniority as of May 10, 1913 and October 15, 1916, respectively; that about July, 1935, there was a reduction in train dispatchers' positions on the division mentioned, resulting in the displacement of McHugh and the claimant, both of whom transferred, McHugh to Wagstaff, Kansas, and claimant to Pueblo, Colorado, but they retained their Omaha division seniority rights; that June 15, 1937, and while at Wagstaff, McHugh was appointed trainmaster, an "official" position in contemplation of the agreement; that July 7, 1937, claimant retransferred to the Atchison office; that November 25, 1937, McHugh returned to active service as a train dispatcher, and was permitted to displace claimant, who protested, at Atchison. In consequence, and that he might have employment, claimant was obliged to exercise his seniority at Monroe, Louisiana. That in transferring to Monroe, and within a few months retransferring back to Atchison, as detailed in his claim, already stated, he suffered a money loss.

The question is, rule 14 considered, Was claimant competently displaced? In claimant's behalf, it is contended that since within one year from McHugh's appointment as trainmaster, he returned to employment as a train dispatcher, he should have transferred to his "regular position," or Wagstaff, whence he was appointed, and that the carrier violated the rule when it required claimant to yield to McHugh at Atchison. The rule:

"Train Dispatchers now or subsequently accepting official positions with either the Missouri Pacific Railroad Company or the American Train Dispatchers' Association will retain their seniority rights as train dispatchers. If returned to active service as train dispatcher within one year of date of acceptance of official position, may return to their regular position; otherwise, may, within thirty days of date of relinquishment of such official position, displace the junior regular assigned train dispatcher on their home division. If this will not procure a regular assignment, may exercise seniority and displace the junior regular assigned train dispatcher on the system."

Pending McHugh's enjoyment of the official position, the first sentence of the rule assured him of the continuance of his seniority rights as a train dispatcher, but only in general terms. The second sentence provided that if he returned to active service as a train dispatcher within one year, he could go back to his "regular position; otherwise," says the rule, "may, within thirty (30) days of date of relinquishment of such official position, displace the junior regular assigned train dispatcher on their home division." The third sentence is to the effect that if the provisions of the second sen-

tence do not operate to procure a regular assignment for the returning train dispatcher, he may have resort to the entire system in his effort to displace a junior dispatcher. The carrier maintains that notwithstanding McHugh returned to dispatcher service "within one year" of his appointment as an official, he was privileged to forego his rights at Wagstaff and displace claimant at Atchison, "their home division."

If consideration is to be given to the expression "within one year," set forth in the rule, and we cannot regard it as meaningless, McHugh's separation from the official position to which he had been elevated was so timed that his sole right was to return as a dispatcher at Wagstaff; and the carrier's requirement that claimant yield to him at Atchison was an erroneous determination, to claimant's material undoing. The word "otherwise," used in the same sentence of the rule, has reference to and emphasizes the importance to be attached to the expression "within one year." It is as if the rule had said, "If a dispatcher, appointed to an 'official' position, holds it longer than one year, but thereafter is separated therefrom, then, if he exercises his right 'within thirty days,' as further provided in the rule, he may displace the junior dispatcher 'on their home division.'"

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 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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1940.