

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Missouri Pacific Railroad Company did not comply with the intent of Paragraph 2 of the Appendix to the current schedule agreement, which became effective as of August 1, 1945, when, on or about December 1, 1945, the Carrier appointed Mr. C. R. Pedigo to the position of Chief Train Dispatcher (now titled Division Trainmaster on this property) at Wynne, Arkansas, and,

(b) The Missouri Pacific Railroad Company shall now fill the position involved in this dispute in the manner prescribed by said Paragraph 2 of the Appendix above identified, and compensate such trick train dispatchers who have been adversely affected for all monetary loss sustained by them by reason of a noncompliance by the Carrier with the rules of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 1, 1943, Mr. C. R. Pedigo held the position of chief dispatcher (now titled Division Trainmaster on this property) in the Wynne, Arkansas, train dispatchers' office, but on November 1, 1943, and in accordance with an official Notice issued by the Carrier under that date, Mr. Pedigo was promoted and according to that Notice, Mr. C. L. Chappius was appointed to that position as successor to Mr. Pedigo. Copy of the latter is shown as Exhibit TD-1.

Mr. Chappius held and continued in the position to which he had been officially appointed until an official Notice issued by the Carrier under date of April 1, 1944, announced that Mr. J. A. Austin had been appointed to that position to succeed Mr. Chappius. Copy of this Notice is shown as Exhibit TD-2.

By reason of his appointment thereto, Mr. Austin held and filled the position until the Carrier's official Notice dated April 12, 1945, announced that Mr. Austin was being "transferred" and that Mr. C. R. Dodson had been appointed as Mr. Austin's successor. Copy of the latter Notice is shown as Exhibit TD-3.

An official Notice issued by the Carrier under date of December 1, 1945, announced that Mr. Dodson was being "assigned to other duties", and that Mr. C. R. Pedigo would "resume" filling the position which at that time was held by Mr. Dodson. Copy of the December 1, 1945 notice is shown as Exhibit TD-4.

Effective August 1, 1945, an agreement on rules governing working conditions of Train Dispatchers was consummated between this Carrier and the

master occupying a different position during peak war period and then returning to his former or a similar position without protest on the part of the Employees.

2. Another, and much more parallel situation, insofar as the instant case is concerned, is that of Mr. C. W. Ivey who, from July 1, 1942 until January 20, 1944, was Division Trainmaster at Little Rock, Arkansas. On the last mentioned date Mr. Ivey was appointed Assistant General Superintendent Transportation on the Gulf Coast Lines and International-Great Northern Railroad, with headquarters Houston, Texas, in place of Mr. E. W. Hargrave who was called to military service. Mr. Hargrave returned from military service in December, 1945 and to his position of Assistant General Superintendent Transportation on the Gulf Coast Lines and International Great Northern Railroad, from which he had been furloughed since January, 1944, on December 16, 1945. On the last mentioned date Mr. C. W. Ivey, who had been acting as Assistant General Superintendent Transportation on the Gulf Coast Lines and International-Great Northern Railroad in the absence of Mr. Hargrave, resumed his duties as Division Trainmaster, with headquarters Little Rock, Arkansas, as evidenced by Carrier's Exhibit "H". This was done without protest from the American Train Dispatchers Association.

The latter example is so strikingly on "all-fours" with the Pedigo case that we must submit to your Honorable Board that he protest in the instant case is certainly an effort on the part of the American Train Dispatchers Association to get your Honorable Board to direct this Carrier to discriminate against Mr. Pedigo.

We feel that the foregoing is conclusive proof that when Division Trainmasters were, during the war period, elevated to other official positions, those who occupied their Division Trainmaster positions during their absence were nothing more than temporary occupants of such positions and held such subject to the return of the regular occupants.

We further submit that Rule 2 in the Appendix has not been violated and that there is no other rule in the agreement upon which the Employees have relied, or can rely, in support of their position in this case.

For the reasons heretofore given, the Carrier submits that the claims of the Employees should be denied.

OPINION OF BOARD: On September 15, 1943, C. R. Pedigo was occupying the position of Division Trainmaster at Wynne, Arkansas. On that date he was appointed to the position of Assistant to the General Superintendent of Transportation which position he occupied until December 1, 1945. On the latter date he was replaced, due to the return of certain employees from military service and given the position of Division Trainmaster at Wynne, replacing C. R. Dodson, a Train Dispatcher with seniority on the Train Dispatchers' seniority roster. Pedigo never has held any seniority rights as a Train Dispatcher on the Missouri Pacific Railroad. The Organization contends that Pedigo was improperly assigned the position of Division Trainmaster at Wynne.

The controlling rule provision states:

"In filling of vacancies in the position of Chief Dispatcher (now titled Division Trainmaster on this property) preference will be given to trick dispatchers subject to the Agreement if there be such trick dispatchers properly qualified; ability and fitness being sufficient, seniority to prevail." Rule 2, Appendix to current Agreement."

The Organization contends that when the position of Division Trainmaster at Wynne became vacant due to the transfer of Dodson, that preference must be given to Trick Dispatchers subject to the Agreement and that the assignment of Pedigo, a person holding no seniority as a Train Dispatcher, was in direct violation of the rule.

The Carrier contends that no vacancy occurred in the Division Trainmaster's position at Wynne, that Pedigo was at all times the regular occupant of the position although holding the temporary position of Assistant to the General Superintendent of Transportation.

The assignment of Pedigo to the position of Assistant to the General Superintendent of Transportation and the assignment of the three Division Trainmasters who succeeded Pedigo as such at Wynne, do not sustain the position assumed by the Carrier. There is evidence in the record, not unequivocally denied by the Carrier, that Carrier officials did not consider Pedigo as temporarily furloughed from the position of Division Trainmaster at Wynne. This conclusion is based on the fact that Carrier sought to assign Pedigo as Division Trainmaster at Bush, Illinois, but the Organization objecting thereto, he was directed to "resume his former duties of Division Trainmaster, Memphis Division, Headquarters, Wynne, Arkansas". The attempt of the Carrier to change the effect of its former assignments by subsequent self-serving expressions contained in assignments made after the dispute arose cannot change the facts as evidenced by the plain, unambiguous language of the Carrier in promoting Pedigo from Division Trainmaster to Assistant to General Superintendent of Transportation. Clearly, the position of Division Trainmaster at Wynne became vacant within the meaning of the rule when Pedigo left it to accept promotion. We find nothing in the record having the effect of reserving any rights in Pedigo to the position of Assistant to the General Superintendent of Transportation.

The Carrier contends that the claim has not been properly handled in that no conference was held between the representatives of the Organization and the highest officer of the Carrier designated to handle such disputes. Such officer did pass upon and deny the claim by letter. Under such circumstances, a conference would be a vain thing. We have held that under such a situation all rule requirements have been met. See Award 2786.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of July, 1946.