

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE CHESAPEAKE & OHIO RAILWAY COMPANY

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

(a) The Chesapeake & Ohio Railway Company ignored the spirit and intent of Rules 6-(e) and 5-(h) of the current agreement between this carrier and its train dispatchers, effective October 1, 1944, and memorandum relating thereto, when it permitted Yardmaster E. D. Thompson to exercise displacement rights as train dispatcher in its Raleigh, West Virginia, office, and

(b) The carrier shall now remove Yardmaster E. D. Thompson from the train dispatcher position on which the carrier permitted him to place himself, and compensate train dispatchers who were thereby displaced or who were or are prevented from performing train dispatcher service for all monetary loss sustained by them by reason of the carrier's wrongful action as above set forth.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing hours of service, compensation and working conditions between the parties to this dispute, effective October 1, 1944, contains the following rules:

RULE 6—Transferring to or from dispatcher positions.

(e) Effective June 9, 1922, dispatchers accepting official positions with the railway, or with the American Train Dispatchers Association, shall retain and accumulate seniority rights as dispatcher on the territory from which promoted. If they are closed out or otherwise displaced, they shall, within thirty days (if seniority and qualifications will permit), return to the positions from which promoted, or displace any regularly assigned junior dispatcher on that seniority territory.

RULE 5 (h) A train dispatcher may exercise rights to any position covered by these rules as follows:

1. When he is displaced.
2. When his position is abolished.
3. Bidding when vacancies occur, positions are created or re-established.

The claim in this case is without merit and should be declined.

OPINION OF BOARD: Rule 6-(e) of the applicable Agreement, which we deem the controlling rule, provides:

"Effective June 9, 1922, dispatchers accepting official positions with the railway, or with the American Train Dispatchers Association, shall retain and accumulate seniority rights as dispatcher on the territory from which promoted. If they are closed out or otherwise displaced, they shall, within thirty days (if seniority and qualifications will permit), return to the positions from which promoted, or displace any regularly assigned junior dispatcher on that seniority territory."

Mr. E. D. Thompson entered the service of the Carrier as a telegrapher-operator on November 5, 1920; was promoted to train dispatcher January 6, 1936; and appointed to position of Yardmaster July 20, 1940, at Thurmond, West Virginia. On April 1, 1946, operations in the coal field served by the Carrier due to a strike of coal miners, was discontinued. The business handled at Thurmond where Thompson was employed was exclusively coal. The Carrier abolished the Yardmaster's position held by Thompson. Thompson requested the Carrier that he desired to exercise his seniority rights as a train dispatcher. This request occurred on May 11, 1946. The Carrier granted the request; as a consequence he displaced a junior dispatcher, and was assigned the second trick dispatcher position at Raleigh, West Virginia. Thompson proceeded to Raleigh on May 12, 1946. On that day he went over the branch serving the coal mines and on May 13, 1946, spent time in the Raleigh office familiarizing himself with the work. He returned to the Raleigh Dispatcher's Office May 19, 1946, and sat in with the dispatchers at work, to complete his posting for the work and to permit him to displace the second trick dispatcher, as had been arranged. On May 13, 1946, a temporary settlement was reached by the miners and the government, and operation in the mines was resumed May 13, 1946, and the third trick Yardmaster position at Thurmond was re-established as of 11:00 P. M., Monday, May 13, 1946. On May 26, 1946, Thompson, by letter to the Trainmaster at Thurmond surrendered all rights to the position as Yardmaster at that point.

The Petitioner contends: That the Carrier illegally permitted Thompson to displace a junior dispatcher by the exercise of his seniority rights in such respect; that the Yardmaster position held by Thompson was not in fact properly abolished within the contemplation of Rule 6-(e). Further proof offered by the Employees that Thompson could have retained his position as Yardmaster is that a Yardmaster his junior on the Thurmond Seniority District did acquire and hold the position as Yardmaster subsequent to the time the Carrier claims the position was abolished; that there were remaining in the service three employees occupying positions of Yardmaster in the same seniority district who were junior to Thompson; therefore, Thompson should have exhausted his efforts to displace as Yardmaster before displacing a train dispatcher. The Petitioner cites Rule 5-(h). From an analysis of this rule, we conclude it has no applicability to the situation presented in the instant case. Under the clear and definite language used in Rule 6-(e), we conclude the Carrier did not violate the effective Agreement between the parties. We fail to find evidence to sustain the Petitioner's charge that the Carrier resorted to subterfuge in handling this matter. We conclude on the record the claim should be denied.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.