

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**MISSOURI PACIFIC LINES—INTERNATIONAL-GREAT
NORTHERN RAILROAD COMPANY**

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

(a) The Missouri Pacific Lines (I.G.N. R.R.) acted contrary to the intent of rules contained in the existing schedule agreement which became effective August 1, 1925, when it awarded to Mr. C. H. Bailey the bulletined position of night chief dispatcher in the San Antonio, Texas office on April 13, 1945.

(b) The Carrier shall now remove said C. H. Bailey from the night chief dispatcher position at San Antonio, Texas, fill the position in accordance with the requirements of the rules of the agreement above mentioned, and compensate train dispatchers adversely affected by the Carrier's wrongful action for all monetary losses sustained by them since the initiation of this claim on appeal by Acting General Chairman W. T. Mathis to Division Superintendent Cook on June 20, 1946.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing working conditions of train dispatchers was entered into between the parties hereto which became effective August 1, 1925, and which was in effect at the time the dispute set out in the above Statement of Claim arose, Article 1 thereof reads:

"The term 'train dispatcher' as herein used shall be understood to include assistant chief, night chief, trick, relief and extra dispatchers."

Article 6-(a) of the above mentioned agreement provides that seniority as train dispatcher dates from the time he last entered the service as such, also that such seniority is effective only when vacancies occur or new positions are created in the office in which he became employed when he first entered the service as a train dispatcher, except as is provided in Sections (b), (c), (d) and (i) of Article 6, which are quoted below in full:

ARTICLE 6.

(b) "When a train dispatcher loses a position through no fault of his own and there are no junior dispatchers in service in his office, he may displace any junior dispatcher in the service in any office on the system."

American Train Dispatchers Association in support of the protest of Division Chairman Keefe is in direct conflict with the interpretation of the rules of the Agreement in the assignment of Dispatcher C. H. Bailey to the position of Night Chief Dispatcher by Mr. A. V. Black who was General Chairman for the American Train Dispatchers Association on the International-Great Northern Railroad as well as other General Chairmen of that Association prior to Mr. Black's tenure of office, evidence of which has been fully set forth in the Carrier's submission and in exhibits attached thereto and made a part thereof.

A review of the letters written by Mr. Mathis, Acting General Chairman of the American Train Dispatchers Association on the I-GN Railroad, to the various officers of the Carrier, quoted in the Carrier's Statement of Facts, will reveal that Mr. Mathis did not offer any evidence in support of his position that Train Dispatcher Keefe should have been assigned to the position of Night Chief Dispatcher instead of Train Dispatcher C. H. Bailey, senior applicant for the position, and neither has he offered any evidence in support of his allegation that the interpretation placed upon the Agreement by General Chairman A. V. Black was in error, while on the other hand the Carrier has submitted evidence that the assignment of Dispatcher Bailey to the position of Night Chief Dispatcher was in compliance with the rules and interpretations placed thereon by General Chairmen of the Dispatchers Association who have served in that capacity since the current Agreement became effective.

It is the contention of the Carrier that the assignment of Dispatcher C. H. Bailey to the position of Night Chief Dispatcher in the Dispatchers' Office at San Antonio of the International-Great Northern Railroad is supported by the applicable rules of the Agreement together with the interpretation of those rules by the representatives of the train dispatchers and the Carrier.

Your Honorable Board is respectfully petitioned to render an award based upon the evidence herein submitted supporting the action of the Carrier in assigning Dispatcher C. H. Bailey to the position of Night Chief Dispatcher under Bulletin SA-3, dated April 1, 1945.

OPINION OF BOARD: It is the contention of the Carrier that the Organization is bound by the interpretation placed upon the provisions of the effective agreement by its representatives and those of the Carrier in their past application thereof. It is of course true that any consistent and just enforcement of labor agreements is necessarily dependent upon sustaining the actions of the duly authorized representatives of labor organizations. This is particularly true if there is an ambiguity in the language used so that it can be given more than one construction or is not clear and definite. But generally such interpretations and practices have no bearing and are not controlling in the interpretation and application of written agreements when the agreements are clear and definite so as to leave no doubt as to their meaning.

Much of the Carrier's interpretation and reasoning are based on the supposition that Bailey was holding a regular position as Night Chief Dispatcher in the San Antonio office within the effective agreement while he was working there under an appointment by the Carrier as a "Division Trainmaster". Although the duties of the office of Division Trainmaster at San Antonio, which position Bailey occupied, were within the scope of the parties' agreement as determined by Award No. 2623 of this Board, which award required it to be reclassified as such, however, Bailey did not come into the position he occupied under the provisions of the agreement but rather by appointment to what the Carrier considered an official position ever since February of 1927. Not having acquired the position in accordance with the terms of the agreement he did not hold it within the intent and purpose thereof. He had only the status of an official with relation thereto and served in that capacity by appointment. We do not think he held the position within the provisions of the agreement and therefore acquired no rights by reason thereof.

Rule VI (a) provides an intra-office seniority rule effective in the office wherein the employee is employed at the time the vacancy occurs or new

position is created subject to the exceptions provided thereto by Sections (b), (c), (d), (e) and (i). It is apparent that Sections VI (c) and (d) have no application here. Nor could (b) have any application in view of our holding that Bailey did not hold a "position" within the meaning of the agreement while he held the position of "Division Trainmaster" at San Antonio.

Section VI (g) of the agreement provides that when an official, such as Bailey was when Division Trainmaster, returns to train dispatching service covered by this agreement he has the option of returning, under the conditions as therein stated, to the office from which promoted. In this instance that is Palestine. If he does exercise that option he can thereafter exercise full seniority. In the absence of exercising the option the provision can have but one meaning and that is, his seniority will date from the time he last entered the service as a train dispatcher. Which, insofar as Bailey being either an extra or relief dispatcher in the San Antonio office, would be March 21, 1945 and would be his rights under VI (l) as it relates to VI (i).

There is one further question as to whether Bailey could exercise rights under VI (e), as amended, in that he was a man who had held a regular position in the San Antonio office. In regard thereto we do not think the fact that Bailey did work as a train dispatcher in the San Antonio office from August 1-15, 1930, under the facts as to his employment at that time, bring him within the intent and purpose of the rule, as amended, to-wit, "men having held regular positions in this office * * *". Nor do we think he was qualified to exercise that right while working as an extra or relief man at San Antonio without having exercised his option under VI (g) and thereby restored to himself his full seniority rights.

It will be observed from what we have said that C. H. Bailey was not entitled to the position of Night Chief Dispatcher in the San Antonio office to which he was assigned as of April 16, 1945. The Carrier should remove Bailey from that position and fill it in accordance with the Rule of the parties' agreement.

In view of the Carrier's method of handling the assignment, that is, seeking the advice of the Association's General Chairman and following his suggestion, we do not think it should be obligated to compensate any train dispatcher adversely affected by the Carrier's action for any monetary loss, provided the position is bulletined and filled within thirty days from the effective date of this award, otherwise, such compensation to be allowed from June 20, 1946.

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 has violated the agreement.

AWARD

Claim (a) sustained; claim (b) sustained to the extent as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.