

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LEHIGH VALLEY RAILROAD COMPANY

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

- (a) The Lehigh Valley Railroad Company violated Article 3-(e) and Article 5-(e) of the agreement between the Lehigh Valley Railroad and its train dispatchers represented by the American Train Dispatchers association covering rates of pay, rules and working conditions when on July 11, 22 and 23; August 21, 22, 23, 24 and 25 and October 4, 5 and 24, 1947, it used as extra train dispatcher junior to G. H. Minchin to perform service as assistant chief dispatcher in its Jersey City dispatching office.
- (b) The Lehigh Valley Railroad Company be required to pay to the said G. H. Minchin the daily rate of assistant chief dispatcher for each of the days mentioned in paragraph (a) hereof, less any amount earned by him on said days for service performed on his regular assignment as telegrapher; and that he be similarly compensated for any days subsequent to October 24, 1947, on which carrier permitted any junior train dispatcher to perform similar service.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the Lehigh Valley Railroad and its train dispatchers represented by the American Train Dispatchers Association, effective July 1, 1938, which agreement was in effect at all times herein referred to; a copy of which is on file with this Board, and by this reference is made a part of this dispute.

Article 3-(e) of said agreement provides:

"Relief requirements regularly less than four days per week will be performed by extra dispatchers according to seniority who will be paid the daily rate of each position relieved."

Article 5-(e) of said agreement provides:

"In filling positions covered by this agreement ability being sufficient, the Supt. to be the judge (subject to appeal), seniority as a train dispatcher shall govern."

The agreement further provides, by Article 5-(j), that temporary vacancies resulting from vacations, sickness, leave of absence up to six months, etc., will not be bulletined.

Dispatcher G. H. Minchin, as shown by the seniority roster of January 1, 1948, established seniority rights as a train dispatcher on May 27, 1924. (Exhibit TD-1). He is not regularly assigned as such, but is the oldest train

OPINION OF BOARD: Claimant, one G. H. Minchin was a regularly assigned telegrapher, also holding seniority rights as an extra train dispatcher. On the dates set forth in the claim an extra train dispatcher junior to Minchin was assigned to cover train dispatching assignments. Minchin claims a violation of the following quoted portions of the Agreement between the Carrier and the Train Dispatchers, and seeks restitution as set forth in the claim.

"Article 3 (e) Extra Work: Relief requirements regularly less than four days per week will be performed by extra dispatchers according to seniority who will be paid the daily rate of each position relieved."

"Article 5 (e) Filling Positions: In filling positions covered by this Agreement, ability being sufficient, the Supt. to be the judge (subject to appeal), seniority as train dispatcher shall govern."

"Article 5 (j) Temporary Vacancies: Temporary vacancies resulting from vacations, sickness, leave of absence up to six months, etc., will not be bulletined but will be assigned to the senior qualified train dispatcher on that roster who makes application therefor. Upon completing work in such temporary position the train dispatcher shall revert to his regular position. Time lost in transferring to or from a temporary vacancy under this provision will not be paid for."

It must be considered as irrefutable that Minchin was entitled to fill these vacancies, if no extraneous factors were existent which would permit deviation from the rule. Carrier pleads that two factors were existent here: (1) A violation of the Hours of Service Law and (2) The non-availability of a qualified extra telegrapher to relieve Minchin of his regular assignment as Towerman at Port Reading.

With some qualification, there is merit in the Carrier's first contention. It is reasonable to construe agreements with respect to validly enacted laws (See Award No. 3849). The Carrier cannot be considered to have violated the seniority provision of the Train Dispatchers' Agreement if it were not informed, or in the exercise of reasonable prudence it could not have been informed, as to the need for an extra dispatcher's services in sufficient time to hold the senior qualified extra dispatcher off duty on his regularly assigned position in order to avoid a violation of the Hours of Service Law in assigning him to duty as such extra dispatcher.

We are not, however, convinced of the validity of the second contention of the Carrier. Here there is no doubt that there were extra telegraphers available. The sole excuse is that none was qualified to handle Minchin's assignment. Why the men were not qualified or required to qualify does not appear from the record. It is fair to assume that Minchin's assignment at Port Reading was a difficult and arduous one for the reason that the Carrier indicates that its efforts to get extra telegraphers to voluntarily qualify for the position were unavailing. Yet the Employees assert and the Carrier does not deny that the Carrier had the right to require employees to qualify for Minchin's regular assignment as a telegrapher. In order to assure him of his right to work as an extra train dispatcher as the oldest train dispatcher, in point of service, on the extra list, qualification of extra telegraphers for Minchin's regular assignment should have been a primary consideration of Carrier's officials. To hold otherwise would be to impose a penalty on Minchin for efficiency in service as a telegrapher to such an extent as to defeat his rights to work in a higher position to which he was entitled both from the standpoint of seniority and qualifications.

Examining the record in view of the above mentioned principles, we find no adequate explanation by the Carrier which would indicate that it did not have, or could not with the exercise of reasonable prudence have had, sufficient notice to arrange for Minchin to be held off duty as a telegrapher in time to avoid a violation of the Hours of Service Law in assigning him as train dispatcher on the dates in question. Nor do we find the existence of emergent or stringent conditions which would explain a failure to have a

qualified telegrapher available to fill his regularly assigned position at Port Reading.

This Board has frequently held that a party cannot ordinarily assert his own negligence or want of foresight as an unavoidable emergency. In view of that principle and for the reasons given in the foregoing paragraphs of this Opinion we hold that the claim should be sustained.

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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd Day of October, 1948.