Award No. 6283
Docket No. TD-6223

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Southern Pacific Company (hereinafter referred to as "the Carrier") failed to comply with the terms of the existing agreement between the parties to this dispute when it refused to compensate Messrs. L. W. Loveday, E. E. O'Connor, W. G. Harville, Jr., and E. E. Griffith, all of whom were at the time this dispute arose—regularly assigned train dispatchers in the Carrier's Bakersfield, California office, for loss of time in changing positions by direction of proper authority, and

(b) The Carrier shall now compensate, at the then prevailing rate of pay, Claimant Loveday for time lost on October 21, 1951; Claimants O'Connor and Harville for time lost on October 31, 1951, and Claimant Griffith for time lost on October 30 and 31, 1951.

EMPLOYES' STATEMENT OF FACTS: There exists an agreement between the Carrier and the Petitioner which became effective April 1, 1947, and was last revised as of September 1, 1949. A copy thereof is on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

For ready reference, the rules of the above mentioned agreement, which we believe to be material to the adjudication of this dispute, are set out below:

ARTICLE 1. Section (a)

This agreement shall govern the hours of service and working conditions of Train Dispatchers. This class shall include chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters, and have substantially the authority of a superintendent with respect to these and other activities. This exception shall apply to not more than one chief dispatcher on any division.

NOTE: In connection with which it is understood that one chief train dispatcher (who is not assigned to perform trick train dispatchers' service), in each train dispatching office, is excepted from the provisions of this agreement.

affords a safe guide in determining what the parties themselves had in mind when the contract was made."

Award No. 4050:

"In view of the long existence of the present practices, and Petitioner's apparent acquiescence therein, coupled with the Agreement and the Wage Scale attached, thereto, we are of the clear opinion that the situation existing on the Carrier's property, illustrated by this claim is one calling for negotiation and agreement, and that this Board does not possess the power to make a change in the existing agreement, such as sustaining the claim would involve. We therefore hold that there has been no violation of the Agreement, and the claim is denied."

Award No. 4086:

"(2) When the current Agreement was negotiated the practice of receiving and of delivering telegrams by Pullman Conductors had been followed for many years. The practice of rating telegrams on the Super Chief had been in existence for at least seven years. We assume the Organization, acting as the Employes' representative, knew of the existence of such practices. But whether it did or not is immaterial. It is charged with knowledge of the working conditions existing at the time the Agreement was executed. If it was desired to have the practices abolished they should have been made subjects for negotiations and agreement. When a contract is negotiated and long existing practices are not abrogated or changed by its terms, such practices are deemed to have been within the contemplation of the parties and approved. Indeed, there is sound precedent for giving them the same force and effect as if they had been incorporated within the terms of the contract itself. See Awards 2436, 1397, 1252, 507. What has just been stated is all the more true when—as here—in addition to long continued acquiescence prior to the filing of a claim the parties have since revised the working agreement, then in force and effect, without abrogating or doing away with the practices of which they then and now complain."

IV

CONCLUSION

The claims in this docket are based on contentions which are directly opposed to express provisions of the current agreement, and carrier respectfully asks that they be denied.

All data herein submitted have been presented to the duly authorized representative of the petitioner and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The American Train Dispatchers Association makes this claim on behalf of Train Dispatchers L. W. Loveday, E. E. O'Connor, W. G. Harville, Jr. and E. E. Griffith. Carrier abolished four train dispatcher positions in its Bakersfield, California dispatching office. As a result these Claimants lost the positions they held. This was due to the fact that either the positions they held were abolished or because someone senior, who had lost his job because thereof, displaced them. Each of these Claimants then displaced on other positions to which their seniority entitled them. This resulted in loss of time to each Claimant as set out

in (b) of the claim. It is for this loss of time that claims are here made under Article 7 Section (a) of the parties' Agreement. This rule provides:

> "Loss of time on account of the hours of service law, or in changing positions, within an office, by the direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. This does not apply in case of transfers account employes exercising seniority."

It will be noted that this rule provides that loss of time of an employe shall be paid for at the rate of the position for which service was performed immediately prior to such change when such loss results from either the hours of service law or from changing positions within in an office when done at the direction of Carrier. However, the last provision of the rule makes neither available when the loss of time results from the employe exercising his seniority.

Carrier had the right to abolish the positions when need therefor no longer existed. It did so in accordance with Article 5 Section (j), giving the six day notice therein required. The four Claimants then had the right, under Article 4 Section (e) and subsections 1, 2 and 3 thereof, to exercise their displacement privileges.

We said in Award 5518:

> "The difference between recognition of an employe's seniority rights by a Carrier in the direction of the working force and the exercise of seniority right by an employe is simply that the latter involves an act of volition or a choice by the employe."

And as stated in Award 4849:

> "When there is no work of a position to be performed, the position may be abolished. This is what happened in the present case and claimant was required to exercise his seniority and displacement rights."

We find that to be the situation here. Nor would the change in rest days of the position temporarily held by Griffith, which was properly done by Carrier pursuant to Article 3 Section (d), cause his loss of time resulting therefrom to come within the provisions of Article 7 Section (a). See Award 1814 of this Division.

Other reasons are presented by Carrier as to why the claims should not be sustained. However, in view of what has already been said we do not feel a discussion thereof either necessary or desirable.

We find the loss of time suffered by these Claimants was directly the result of their having exercised their seniority. In consequence thereof the claim is without merit.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.