

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE RAILROAD COMPANY

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

(a) The Erie Railroad Company, hereinafter referred to as "the Carrier," failed to comply with the current agreement between the parties to this dispute, particularly Article 5 (h) and 5 (k), when on December 21, 1953, and subsequent dates, it failed to use R. O. Brode, the senior train dispatcher, to fill the position of Chief Train Dispatcher in its Youngstown, Ohio train dispatching office.

(b) The Erie Railroad Company shall now pay to Train Dispatcher R. O. Brode the difference between what he was paid as trick train dispatcher and what he would have earned as Chief Train Dispatcher on December 21, 1953; and that he be similarly compensated for each day subsequent to December 21, 1953, on which a train dispatcher junior to him, in seniority rights, is used to fill the Chief Train Dispatcher position.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, bearing effective date of April 8, 1942, and amendments thereto, including a revision effective August 1, 1952. A copy of this agreement and revisions thereto 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 and convenience of the Board the rules most pertinent to this dispute are quoted as follows:

"Article 1

"(a) Scope (Effective February 4, 1947).

"The term 'Train Dispatcher' as herein used shall include Chief, Assistant Chief, Trick, Relief, and Extra Train Dispatcher, except one Chief Train Dispatcher in each dispatching office, who will not regularly be required to perform Trick Train Dispatchers' duties."

The Carrier desires to make it clear that nothing herein is intended to belittle the claimant in any way, nor is it a reflection upon his good character. It is simply a case where he has been unable to prove his worth to fill the Chief's position after many trials. This is no disgrace as most individuals to some extent have limited ability.

The Carrier submits that it has shown why it cannot entrust its operation of the Mahoning Division in the hands of the claimant. Furthermore, there is adequate precedent to support Carrier's decision. The findings and opinion of Award 3151 should be followed. The Board there said:

"It is the function of management to select competent employees. Except where it has limited itself by contract, the right of selection is wholly within the discretion of management. **The Board should hesitate to override the judgment of the Carrier on a matter of this kind and risk the inefficient performance of railroad operations.** The present case is not one that warrants any interference by this Board with the decision made by the Carrier." Emphasis supplied.

The foregoing pronouncement is completely applicable to the instant case in a greater measure than in the case covered thereby. This for the reason that a chief dispatcher is responsible for immediate train operation over the division under his jurisdiction, whereas the issue covered by Award 3151 involved the position of Interline Freight Clerk. Thus, if a clerk lacking fitness and ability creates "inefficient performance of railroad operations," and we agree that it does, it is not difficult to understand the inefficiency that would inevitably occur if the Carrier were required to fill the chief dispatcher position by using a train dispatcher who lacks the necessary fitness and ability, and especially a train dispatcher who has fully demonstrated by trial that he lacks fitness and ability to reasonably fulfill the duties of the chief dispatcher.

To sustain this claim would be to place a wholly unwarranted imposition upon the Carrier, and would have the effect of saying that this Board approves inefficient operation of Carrier's Mahoning Division.

In view of the facts presented and for the reasons stated together with authorities cited herein, the claim is not supported by the applicable agreement and it should be denied.

The Carrier submits that all data in support of its position in this case has been discussed with or is known to the Organization or the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: As we view the situation here presented, an interpretation of the meaning of Article 5, Sections (k) and (i) is necessary to resolve the question in dispute. In brief, these sections provide, in the matter of filling of Chief Dispatcher position for the Division on two days each week: Carrier officer concerned must decide who will be given the position by a consideration of all train dispatchers and fitness and ability is a designated test. However, he is to give first consideration to train dispatchers on the seniority territory involved.

This claim falls within that category of cases in which it is necessary to show that the discretionary prerogative given was used by Management in an arbitrary manner of capricious nature and generally to be unfair in its application.

We find no basis in this record for sustaining award or showing made that the discretionary right given Carrier was abused. See Awards 3537, 5025, 6489 and 6877.

On this record, we do not believe the judgment exercised by Carrier should be disturbed.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.