Award No. 7212
Docket No. TD-7168

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE RAILROAD COMPANY

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

> The Erie Railroad Company, hereinafter referred to as "the Carrier" shall now pay to Train Dispatcher F. J. Conklin, of its Jersey City, New Jersey train dispatching office, an additional day's pay beginning June 2, 1953 and each succeeding work day until the Carrier complies with the provisions of Article 5 (j), of the current agreement, because Conklin was prevented from exercising seniority rights under Article 5 (l) due to Carrier's failure to bulletin the position held by Conklin as a new position when the dispatching territory known as the Northern Railroad was added to the position held by Conklin which, until June 2, 1953, had consisted of the dispatching territory known as the New York and Greenwood Lake Division.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Erie Railroad Company and their train dispatchers represented by the American Train Dispatchers Association, effective April 8, 1942, including amendments thereto, governing hours of service and working conditions of train dispatchers. A copy of this agreement is on file with your Honorable Board and by this reference is made a part of this submission as though fully set out herein.

For the convenience of the Board the following rules of the agreement pertinent to this dispute are quoted as follows:

"ARTICLE 5

PERMANENT VACANCIES

(j) Permanent vacancies or new positions shall be bulletined within 5 days to all train dispatchers on that seniority district (copy to be furnished to the Chairman for the office) who shall have five (5) days from the date bulletin is posted within which to file written application . . .

Chairman's letter of April 27, 1954, Carrier's Exhibit "L", makes it clear that he too declined the offer. Also see Carrier's Exhibit "Q".

In the light of the foregoing facts, it is clear that the Organization has put itself in an anomalous position. It is here asking this Board to direct the Carrier to do exactly the thing the Carrier offered to do on July 29, 1953. This, indeed, is an unusual situation and the Carrier is unable to anticipate the motive behind it. Based on these facts it is evident there is some doubt in the mind of the petitioner as to whether or not its position is sound. However, in considering this case, the Board should keep Carrier's offer in mind.

It is certain that neither Article 5 (j) nor Article 5 (l), relied on by the Organization, has application to the facts and circumstances surrounding this dispute. In fact, a review of the complete agreement will disclose there is no provision therein that requires or permits the Carrier to bulletin claimant's position as a new one for the purpose of giving him a displacement right.

From the foregoing, it is clear that this dispute should be dismissed on the basis of Carrier's valid, justified and Board supported protest. However, if the Board finds it cannot recognize former authorities in support of the protest, then the claim must be denied in its entirety on the grounds that a sustaining award would require the writing of a new or the amending of an existing rule, which action, of course, is beyond the power of this Board. Awards 5971, 5977, 6107, 6208, 6271, and others.

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 employes.

(Exhibits not reproduced)

OPINION OF BOARD: This claim arises out of the same facts and circumstances set forth at some length in Award No. 7211. The facts detailed in that award will not be repeated here except insofar as they relate particularly to the specific claim involved in this case. In short, Claimant was the incumbent of the position known as first-trick dispatcher New York and Greenwood Lake Division. There was in existence another separate position known as first-trick dispatcher Northern Branch District, New York and New Jersey Railroad. On May 28, 1953 Carrier issued a notice to the effect that the dispatcher position known as first-trick Northern R. R. would be abolished effective June 2, 1953; and that the work of that position would henceforth be done by Claimant.

Claimant contends that the effect of the abolition of the Northern first-trick position and the addition of its duties to the Greenwood Lake first-trick position was to create a new position, and that under Article 5 (j) of the Agreement the Carrier was required to bulletin it as such. He further contends that the failure of Carrier to bulletin the new position prevented him from exercising his displacement rights under Article 5 (l), and claims an additional day's pay beginning June 2, 1953 and continuing until Carrier bulletins the new position.

Article 5 (j) provides:

"PERMANENT VACANCIES.

(j) Permanent vacancies or new positions shall be bulletined within 5 days to all train dispatchers on that seniority district (copy to be furnished to the Chairman for the office) who shall have five (5) days from the date bulletin is posted within which to file written application. The successful applicant shall be awarded the position within five (5) days from the close of bids. After having been awarded the position, applicant will have not to exceed fifteen (15) days following the day of award in which to demonstrate his fitness and ability to handle awarded position, during which period he will retain seniority rights to his former position. Failing to qualify on

the awarded position within the 15 day period, he may then return to his former position. During the 15 day period his former position will be considered a temporary vacancy"

Article 5 (l) provides:

"DISPLACEMENT RIGHTS.

(l) Except as provided for in Section (m) of this Article, a Train Dispatcher may displace any Train Dispatcher his junior where he holds seniority hereinbefore provided; (1) if he is displaced by a senior train dispatcher; (2) when his position is abolished, or (3) when the location of his office is changed to another city. Claim to make displacement must be made in writing within 10 days, unless prevented by sickness or proper leave of absence, in which event it must be made within 10 days after the dispatcher's return. Failure to make displacement claim as herein provided shall result in the dispatcher reverting to the extra list and he may thereafter bid on subsequent vacancies or new positions."

Carrier contends that the changes which occurred merely amounted to the assignment of some additional duties to Claimant's existing position, and that these changes were not substantial enough to destroy the identity of that position as it had existed previously.

We think that the change in Claimant's position brought about by adding to it the duties previously assigned to the Northern R. R. position changed its identity substantially. The cases cited by Carrier wherein rest days were changed, additional equipment was added, dusting duties were changed to sweeping duties, etc., are not analogous to the present case, where the very thing which gave the position its identity—the line of track for which it was responsible—changed materially. The changes ordered by Carrier effective June 2, 1953 resulted in the creation of a new position under Article 5 (j) and it should be bulletined as such in accordance with that rule. To this extent, the claim is sustained.

However, the record does not show that Claimant has suffered any loss because the position was not bulletined promptly, and no rule is cited which entitles him to the additional compensation claimed. The claim for additional compensation is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 the Agreement was violated.

AWARD

Claim disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 24th day of January, 1956.