Award No. 10705

Docket No. TD-11754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(a) The Chicago & Eastern Illinois Railroad, hereinafter referred to as "the Carrier" violated and continues to violate Article 1, Sections (a) and (b) and Article 5, Section (a) of the currently effective agreement between the parties to this dispute when they required an employe not covered by the agreement to perform service as Chief Train Dispatcher at Salem, Illinois on February 8, 1959.

(b) Claim that the Carrier shall now compensate the senior qualified and available extra train dispatcher one (1) day's pay at Chief Train Dispatcher's rate for February 8, 1959 and each subsequent date that the above violation continues.

(c) Claim that in the event there is no qualified extra train dispatcher available on any date such violation occurs, Carrier shall compensate the senior qualified regularly assigned train dispatcher available on his regularly assigned rest day one (1) day's pay at one and one-half times the rate of his regularly assigned position on the date or dates an employe not covered by the above agreement rules performs service as Chief Train Dispatcher.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, identified as "Schedule No. 4" effective December 1, 1950. 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 incorporated herein.

Article 1 Sections (a) and (b) and Article 5 Section (a) of said Agreement are particularly pertinent to this dispute and, for ready reference of your Honorable Board, are quoted here as follows:

"ARTICLE 1

"(a). Scope

The term 'Train Dispatcher' as herein used shall include Chief,

Dispatcher positions" are outside the Agreement's scope. Presented here with the same issue the answer must be the same. A denial award is, therefore, required.

The Carrier affirmatively stated that all data contained herein has been handled with the representatives of the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Although the Carrier has raised a procedural question in the record, it was not argued before the Referee. Nonetheless, on the basis of the record and the awards of this Board and Boards of other Divisions, the Organization, as the representative of the employes it represents, has the right to seek the enforcement of the provisions of the Agreement. The claim is properly before the Board for adjudication. See Awards 4461 (Carter), 4850 (Carter), 2569 (Shake), 8203 (Wolff), 5923 (Parker) and many others.

The Organization relies on the following provisions in the Agreement as pertinent to this dispute:

"ARTICLE 1

"(a). **Scope**

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

"(b). **Definitions**

1. **Chief Train Dispatcher**

Assistant Chief Train Dispatcher

This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains on a division or other assigned territory, involving the supervision of Train Dispatchers and other similar employes; to supervise the handling of trains, the distribution of power and equipment incident thereto; and to perform related work.

2. **Trick, Relief and Extra Dispatchers**

This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

NOTE: Paragraphs 1 and 2 of Section (b) shall not operate to restrict performance of work to the respective classes therein defined."

"ARTICLE 5

"(a). **Filling Positions**

> In filling positions within the scope of this agreement, ability being sufficient, seniority shall govern."

It also relies on Memorandum of Agreement effective December 1, 1950, and the Mediation Agreement dated August 26, 1953, both of which are part of the record.

The question is whether a Trainmaster, who has no seniority rights under the Agreement, has the right to relieve the Chief Train Dispatcher on his rest days and others days of absence.

The Carrier argues that the Chief Train Dispatcher is not covered by the rules of the Agreement and that in Award 7027 (Rader) we held "that Chief Dispatcher positions are outside the Agreement's scope." It is the Organization's position that we decided the dispute in Award 7027 on procedural grounds and not upon the merits.

While it is true that we dismissed the claim in Award 7027 instead of denying it, we, nevertheless, did so because a "reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions are outside the Agreement's scope." What was the interpretation sought by the Organization in that dispute? The claim in that dispute sought to compel the Carrier to assign employes included in the Scope Rule to relieve the Chief Dispatcher. The dispute now before us seeks the same remedy, but additionally also seeks monetary compensation. Whether the Board dismissed a claim or denies it is immaterial if the reason for such dismissal is identical with the reason which might have been the basis for a denial. No procedural or jurisdictional questions of time limits or compliance with the provisions of the Railway Labor Act was involved in the dispute in Award 7027. The identical Article 1, Scope Rule, was involved in Award 7027 as is involved in this dispute. We hold that Award 7027 is applicable in this dispute and, unless palpably erroneous or overruled, should be followed.

Awards 1877 (Bakke) and 2668 (Shake) are not relevant to the construction of Article 1 of the Agreement. We held in both cases that the Local Chairman consent to an assignment of employes does not constitute an agreement where the Local Chairman was not a party to the original agreement.

In Award 2943 (Carter) the Claimant relieved the Chief Dispatcher while he was on vacation. The same Claimant was also required on several occasions "to perform Assistant Chief Dispatcher's work from 4:00 P. M. to 8:00 P. M., in addition to performing the Chief Dispatcher's work between 8:00 A. M. and 4:00 P. M. The claim was for compensation at the overtime rate when the Claimant additionally worked as Assistant Chief Dispatcher. We said in that case:

> "It is not disputed that Chief Dispatcher Mattingly was excepted from the Agreement. The Chief Dispatcher was paid a monthly salary which includes all duties and responsibilities of the position. No overtime is paid him for time worked in excess of eight hours or for work performed on his relief day. It is the contention of the Carrier that Read in performing the work of the Chief Dispatcher, an excepted position was no longer within the scope of the Agreement and consequently in no position to invoke the overtime provisions in it contained.

We do not think the Carrier's position can be sustained. The rule plainly says that the exception shall apply to not more than one chief dispatcher on any division and the letter of understanding makes it clear that only one chief train dispatcher in each train dispatching office is excepted from the agreement . . . We are of the opinion that under this rule, so long as the chief dispatcher's position is occupied, the occupant of the position only is excepted from the agreement and any employe relieving him for any cause would be subject to the provisions of the Agreement."

The Board confirmed this ruling in Award 2944 (Carter).

In Award 5244 (Boyd) we said:

"The question now arises as to whether the train dispatcher is outside of the Scope of the Agreement when he relieves a Chief Train Dispatcher . . . The Carrier contends on the affirmative on the ground that, when the train dispatcher relieves the Chief Train Dispatcher, he is removed from the Scope of his Agreement because such position is expressly excepted there from the Scope Rule. We do not find, however, that the Agreement supports this contention."

We said in Award 5371 (Elson):

" . . . we have held in numerous awards that only the occupant of the position of Chief Train Dispatcher is excepted from the agreement and any employe relieving him for any cause would be entitled to the benefits of the agreement."

This Board further sustained this position in Awards 5716 (Smith) and 6292 (McMahon).

The Scope Rule involved in Award 7914 (Shugrue) was identical with Article 1(a) of the Agreement before us. The claim in Award 7914 was filed by a Relief Train Dispatcher who had temporarily filled the position of Chief Train Dispatcher. He asked for additional compensation while filling the position of Chief Train Dispatcher. We said in that Award:

" . . . only the occupant of the position of Chief Train Dispatcher is excepted from the Agreement and any employe relieving him for any cause would be entitled to the benefits of the Agreement."

The facts in the dispute before us are different. In each of the Awards above cited, a claim for premium pay was made by an employe covered by the Scope Rule who had relieved a Chief Train Dispatcher. Those awards rightfully held that each such employe was entitled to whatever extra or premium pay the Agreement provided for such relief work. Here, the Carrier assigned a Trainmaster, who is not covered by the Agreement and who is a managerial employe, to relieve a Chief Train Dispatcher on his rest days, vacations, illness and other absences.

The parties to this dispute are the same Organization and Carrier who were involved in the dispute determined by Award 7027 (Rader). The Agreement is also the same. In Award 7027 the Organization sought to compel the Carrier to assign an employe covered by the Scope Rule to relieve the Chief Train Dispatcher on his rest days. In the dispute now before us the Organization is seeking the same relief by alleging a violation of the Agreement and requesting compensation for "the senior qualified and available extra train dispatcher" . . . or if none is available for "the senior qualified regular as-

signed train dispatcher available on his regularly assigned rest day . . . " We dismissed the claim in Award 7027 because a "reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions are outside of the Agreement's scope."

Award 7027 was adopted on June 29, 1955. From then until now we have had no occasion to reconsider the interpretation of the same contract provisions. For nearly six years since Award 7027 was adopted the parties have operated under the same Agreement. The record, unfortunately, is not as complete as it might have been. Both parties could have presented more detailed facts which may have enlightened this Board on the practices followed in filling the position of Chief Train Dispatcher on rest days, vacations and other absences. But the burden of proof is upon the Organization. There is no affirmative evidence in the record showing that employes within the Scope Rule generally or regularly relieve Chief Train Dispatchers and that this was the intent of the parties.

We cannot permit equities to influence our decisions. We likewise, cannot write a new Agreement for the parties or to interpret an existing Agreement which has the effect of a new Agreement. If the Organization is dissatisfied with the interpretation given to the not too clear provisions of Articles 1 and 5, it has the right to negotiate amendments thereto. This is the proper and purposeful procedure. This Board should not be used to accomplish what should rightfully be the function of Collective Bargaining.

Upon a review of all considerations, we are compelled to hold that Award 7027 is not palpably wrong and that we must, therefore, hold that it is applicable to the facts in this dispute.

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;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1962.

DISSENT OF LABOR MEMBER TO AWARD 10705, DOCKET No. TD-11754

The holding of the majority in Award 10705 must be dissented to upon three express and clearly valid grounds:

FIRST: It is factually incorrect in respect to the basic issue involved.

SECOND: Award 7027, the sole cited authority upon which this erroneous Award is premised:

(a) Is inapplicable as precedent, and

(b) It was subsequently urged as precedent and rejected by this Division.

THIRD: In addition to being factually incorrect, not supported by applicable precedent and therefore erroneous Award 10705 was rendered to and adopted by the Division with unconscionable disregard for and in violation of a most basic and long-established procedural rule of this Division, to all of which the author of this dissent directed attention in a supplemental brief of record herein in advance of the Division's consideration and adoption of the Award.

In respect to the first valid ground for dissent, attention is directed to the majority's statement that:

> "The Scope Rule involved in Award 7914 (Shugrue) was **identical** with Article 1(a) of the Agreement before us . . . " (Emphasis ours.)

The quoted statement is factually incorrect, and in respect to a very basic issue in this docket. It can be best and clearly indicated by simply quoting the two Scope Rules referred to in the majority's holding.

The Scope Rule involved in Award 7914 provides:

> "(a) SCOPE. This agreement shall govern the hours of service, compensation, and working conditions of train dispatchers. The term 'train dispatchers' as hereinafter used shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief train dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement."

Article 1(a) of the Agreement applicable to Award 10705 provides:

> "(a) Scope.
>
> "The term 'train dispatcher' as herein used shall include Chief, Assistant Chief, Trick, Relief and Extra Train Dispatchers, except one Chief Train Dispatcher in each dispatching office, who will not regularly be required to perform Trick Train Dispatchers' duties." (Emphasis ours.)

Obviously, the two Scope Rules are NOT "identical," as the majority unqualifiedly states to be a fact. To the contrary they differ in a basically important respect. Clearly, the Scope Rule involved in Award 7914 does NOT, in any respect, include Chief Dispatchers. Indeed, the rule clearly and unambiguously and very expressly exempts the one exception from "the scope and provisions of this agreement."

But Article 1(a) of the Agreement involved in Award 10705 **expressly includes Chief Dispatchers within the scope of the agreement.** Having included Chief Dispatchers within the scope of the agreement it then exempts one, and

only one, provided he be not regularly required to perform trick train dispatcher's duties. The basic and obvious distinction between the two rules is that the rule here in reference includes Chief Dispatchers as a category of the class or craft of train dispatchers within the scope of the Agreement, and excepts only one in each office. The status of that one excepted Chief Dispatcher is of controlling factual importance and this was repeatedly called to the attention of the Referee with extensive citation of authority, all of which is of record herein.

The two significant and controlling points are:

(1) The authority just referred to, some nineteen Awards of this Division, holds expressly or in substance that in scope rules of train dispatcher agreements such as that involved in Award 10705, the exception applies ONLY to the ONE APPOINTED INCUMBENT, and NOT to the POSITION of Chief Dispatcher. Certainly if there is one point in which the doctrine of stare decisis is applicable, this is it!

(2) That the exception in Article 1(a), extending as it does to only the one appointed incumbent in each office, **and Chief Dispatchers, as a category in the class or craft of train dispatchers being included in the scope of the Agreement,** then it can only follow that in the absence of the **one appointed incumbent** all chief dispatcher work is within the scope of the agreement and consequently must be performed by those covered thereby.

Clearly, therefore, the holding of the majority is not only factually incorrect but in incredible disregard of the clear and unambiguous terms of the scope rule.

The erroneous Award is expressly premised upon Award 7027.

The attention of the Referee was specifically and repeatedly directed to the fact that Award 7027 **is a dismissal Award.** In that dispute the Carrier's position was simply and solely that the claim presented to the Board was not the same claim presented and negotiated on the property, by reason of which it was urged that it be dismissed for want of jurisdiction. A casual review of the record makes this very clear. The Division agreed with the Carrier's contention and dismissed the claim in a brief three paragraph opinion here reproduced in full:

> "This case does not contain a monetary award.
>
> "A reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions **are outside the Agreement's scope.**
>
> "Therefore, the question presented for interpretation **is outside the jurisdiction of this Board."** (Emphasis ours.)

How can this Board decline jurisdiction of a dispute and at the same time adjudicate it? Obviously, it cannot. Moreover, the gratuitous dictum in the second paragraph is factually incorrect, as even a casual reading of Article 1(a) makes clear. For the category of Chief Dispatcher positions as a part of the class and craft of train dispatchers (and that is where the Interstate Commerce Commission has placed them for almost half a century) is NOT outside the scope of the Agreement. To the contrary that category **is expressly included in the scope of the Agreement,** and then the exception as to one in each office follows. As has already been pointed out, **that exception extends**

ONLY to the one appointed incumbent and NOT to the position.

Clearly, when a dispute is dismissed by this Board for want of jurisdiction, as in the case of Award 7027, it is something more than outright fatuousness to urge it as a precedent for anything other than a basis for dismissing a claim.

Moreover, Award 7027 was expressly urged as a precedent in disposing of the dispute involved in Award 7914, as an examination of the record in that case discloses. In the light of the fact that the claim in Award 7914 was sustained, the contention in respect to the claimed precedent value of Award 7027 was obviously rejected. Yet in the instant case it is clear that the majority premises its holding on a rejected precedent and in the process blunders into a demonstrably erroneous factual statement of basic importance which was repeatedly called to the Referee's attention. Obviously, the result is an unfortunate fruition of the Scriptural admonition that "if the blind lead the blind, both shall fall in the ditch."

Entirely apart from the foregoing, the erroneous holding of the majority herein the Award here subject of this dissent was rendered by the Referee and considered and adopted by this Division in callous and contemptuous disregard of a long-established procedural rule of this Board, and one which goes to the very roots of due process.

Reference is made to the rule that there shall be no ex parte presentations or discussions by either of the disputant parties, and for reasons so obvious as to call for no comment here. Yet such ex parte discussions were indulged in in the handling of this dispute. It is all a matter of record in the docket and need not be the subject of any extensive comment here.

The record discloses that the required panel argument was held in accordance with this Board's procedural rules. Thereafter a proposed Award was rendered wherein the claim was unqualifiedly sustained. Subsequently, the Carrier Member and the Referee engaged in extensive ex parte discussions and re-argument of the case following which another proposed Award was rendered, the first four and one-half pages of which were identical to the Award first proposed. The follow five paragraphs in which the Referee completely reverses his original proposed findings and renders a denial award.

The author of this dissent earnestly submits that the contemptuous disregard of this Board's basic rules of procedure on the part of the Carrier Member, all as recited in the record, and the Referee's culpability in respect thereto, whether as a result of inexperience or for any other reason, can have no other effect than that of casting grave doubt upon such ill-advised, improper and completely unwarranted shenanigans. To put it in the most charitable terms, this erroneous Award could not in good conscience be cited as having any precedent value whatever.

Moreover, the Referee, in his somewhat superficial if not inept searching for some basis for completely reversing himself evidences either an incredible disregard for the record before him or an almost incomprehensible misunderstanding of the issues presented. Certainly at this late hour and date of this Board's long history there should be no misunderstanding of the fact that the responsibility and authority of a Referee is confined, for obvious reasons, to disposing of the issues presented. Hence, reference to what the practice has been is improper for the record presents no such issue, nor does the record disclose any denial of any statements relative to what has been done in the past. And in any event, assuming arguendo that the question of practice was

presented, any practice inconsistent with the clear provisions of the Agreement would be, as this Division once observed, invalid even if it continued until "kingdom come." Moreover, as in this instance, any affirmative assertion of fact such as appears in the record, if not denied (and the record discloses no such denial) must be accepted as true, and this Board has so held on numerous occasions.

The final paragraph of Award 10705 as adopted by the majority asserts that "Award 7027 is not palpably wrong." Again, let it be pointed out that Award 7027 dismissed the claim here involved expressly for want of jurisdiction—that and nothing else! If the quoted words of the Award are intended to mean that the Division was not "palpably wrong" in dismissing the Claim in Award 7027 for want of jurisdiction, that is one thing. But if the words in reference are intended to mean that Award 7037 disposed of the issues presented in Docket TD-11754, that is an entirely different matter. And certainly in the light of all the facts and circumstances of record and commented upon in this dissent then, clearly, it is the majority in this case that are "palpably wrong."

This Division has never been reluctant to disregard inappropriate and invalid precedent. Nor should it be. For as the late Justice Jackson once observed "the fact that this Court was wrong yesterday is not reason why it should not be right today."

In terms of the intended usefulness of this agency it is most unfortunate that we have here an example of an Award which evidences not only factual incorrectness, incredible regard for the precise issues, the record before it, but also evidences an apparent and most regrettable lack of forthrightness.

The Labor Member therefore most earnestly dissents and submits that the Award is improper, erroneous and must be deemed to be an outstanding instance of almost everything that an intelligent, objective and factually correct Award should NOT be!

R. H. Hack

LABOR MEMBER: THIRD DIVISION
(Supplemental Board)

August 17, 1962

CARRIER MEMBERS' ANSWER TO DISSENT OF LABOR MEMBER AWARD 10705, DOCKET TD-11754

It is not the purpose of the Carrier Members to engage in a post mortem writing contest with the Labor Members. This Answer should not have been necessary because, in the first place, the subject claim should never have been submitted to this Board. It was a "repeater" case. **Award 7027.** In the second place, the Petitioner might well have contemplated the result of its having been brought here. The fact that the Referee first considered the claim sustainable, and later correctly recognized that other than a denial (or dismissal) award would constitute serious error is quite beside the point. The important thing is that the correct decision was ultimately rendered and adopted. No man is to be criticized for doing a job right. This applies to those involved in the majority decision in this case and particularly to the Referee.

The Labor Member said he must dissent to the award for "three express and valid grounds." We shall discuss those three "grounds" in the order that they appear in the dissent. Let us see if they are valid. The dissenter states:

"**First**: It is factually incorrect in respect to the basic issue involved."

The basic issue involved was whether or not the Organization had the right to dictate to the Carrier who the latter must use to fill a position **not** covered by the Agreement between the parties. The dissenter of course, claimed to feel that the issue was whether or not the position was covered by the Agreement. In this feeling, the dissenter, and not the majority, was wrong. If the Agreement ever **includes positions** of Chief Train Dispatcher, it just *as surely excepts one such position in each office. Petitioner cannot have his* cake and eat it too. The word "position" is not used in that portion of the rule (Article 1(a) Scope) saying that Chief Train Dispatchers are covered by the Agreement. It does not use the word "position" in that portion which excepts one Chief Train Dispatcher in each office. All rules of common sense, as well as even the most elementary rules of contract construction and interpretation, must surely dictate, then, that if it is not the one **position** which is **excepted,** then no **position** has ever been **included.**

If, as Petitioner says, only "John Doe" is **excepted,** *and not the position,* then only "John Doe" was **included** and not the position. Petitioner's argument constituted an absurdity, and **Award 7027** clearly ruled against their argument.

In addition to the above, the Agreement itself shows the absurdity of Petitioner's argument, and consequently, of the dissent. What is meant by the term "Chief Train Dispatcher," whenever it appears in the Agreement? What better authority is there than the Agreement itself for answering that question? Article 1(a) Scope is the "controversial" rule in which the term twice appears. *In no more remote place than Article 1(b) Definitions, the parties* to the Agreement stated what they meant by the term "Chief Train Dispatcher." That rule says:

"(b) **Definitions.**

1. **Chief Train Dispatcher**

Assistant Chief Train Dispatcher

This class includes **positions** in which the duties of incumbents are to be * * * ." (Emphasis ours.)

Petitioner could have much more easily contended that black is white. At least some people are color blind.

If one Chief Train Dispatcher position in each train dispatching office on the Chicago and Eastern Illinois Railroad is not excepted from the Agreement between the parties, **then Petitioner has never negotiated a single position of any kind into that agreement.** Article 1(a) Scope lists "Assistant Chief." It does not say "Assistant Chief **positions.**" It lists "Trick," but not "Trick **positions.**" If Petitioner's theory were correct, then they have not included any positions in the Agreement. If the word "position" had to appear in the exception to make said exception apply to the position, then the word "position" had to appear to bring positions within the Agreement. In any event, Article 1(b), *supra, defines* the various classifications, and Article 1(a) clearly shows such definitions to apply "as herein used." It does not say "as **sometimes** herein used," so that Petitioner can contend the term "Chief Train Dispatcher" covers positions as used in the first part of one sentence, Article 1(a) Scope, and then that the same term, when used in the same sentence (the exception) a few words further, means "John Doe," and not a position.

If this were a brief on the subject matter, we would go into the facet of negotiations for individuals versus negotiations for positions in the Railroad Industry. Most persons interested in this case are informed along those lines, and will recognize Petitioner's argument in this case, and in the dissent, as frivolous, at best.

The dissent next says:

> "**SECOND:** Award 7027, the sole cited authority upon which this erroneous Award is premised:
>
> (a) Is inapplicable as precedent, and
>
> (b) It was subsequently urged as precedent and rejected by this Division."

Award 7027 was relied on for the very good reason that it is the only award ever rendered on the precise issue involved in this case. Petitioner tried to becloud the issue and the entire case by citing obiter dictum from awards which positively were not in point. The awards they cited did not go to the question of the right of anyone to perform service. They went to the matter of computation of rates of pay for persons who had already performed such service. Almost invariably, it was service which had been contracted to the employes involved (in the Agreements on the respective properties involved in those inapplicable awards. **Award 7027** is an award involving the very Agreement before us in the instant case. It clearly ruled, **without dissent,** "Chief Dispatcher **positions** are outside of the Agreement's Scope." (Emphasis ours.) Thus, it is clear that **Award 7027** was the only applicable precedent, and the dissenter's implication that irrelevant awards should have been followed has no more logic than Petitioner's basic argument in the case.

The dissenter says **Award 7027** "was subsequently urged as precedent and rejected by this Division." Said award has never, before the instant case, been urged, much less rejected, as a precedent in a case involving the question involved in the instant case. No other such case has ever been submitted to this Board. The only two ever submitted—**Award 7027,** and the instant case—are from the same property, under whose Agreement the service involved has never been contracted to dispatchers.

The dissenter's third assertion reads as follows:

> "**THIRD:** In addition to being factually incorrect, not supported by applicable precedent and therefore erroneous Award 10705 was rendered to and adopted by the Division with unconscionable disregard for and in violation of a most basic and long-established procedural rule of this Division, to all of which the author of this dissent directed attention in a supplemental brief of record herein in advance of the Division's consideration and adoption of the Award."

We did not set out to answer the dissent seriatim. Our answer to the last above quotation will make it unnecessary to do so, because little weight can be given any argument made by the author of that quotation, once the significance thereof is realized, and this is it: The dissenter by his own choice, boycotted a panel re-discussion of this claim and now he is complaining because he wasn't there. But, instead of blaming himself, he seeks to blame the Referee. The meeting was duly set, and the dissenter appeared at the appointed time, simply to say he declined to attend; after which he left of his own free will and accord. We should point out for the benefit of the record, however, that the dissenter did, just three days later, attend and participate

in a re-discussion of the case; he was given, and he utilized full opportunity to present his views.

Anyone capable of reading and understanding the English Language will be able to understand the ground on which the case covered by **Award 7027** was dismissed. It was dismissed because of the Board's findings on the very issue involved in the instant case. The dissenter's play on the words "dismissed" and "denied" is at best simply a ruse.

The dissenter's remarks about the Scope Rule in **Award 7914** and the one in the instant case being different avails him nothing. We have already said that the "precedents" the Petitioner cited were not analogous. Petitioner, and no one else, cited **Award 7914.**

The correct result was reached, and all due process afforded, in **Award 10705.**

/s/ O. B. Sayers

/s/ G. L. Naylor

/s/ R. E. Black

/s/ R. A. De Rossett

/s/ W. F. Euker