



Award No. 15477

Docket No. TD-15787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

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

(a) The Alabama Great Southern Railroad Company, (hereinafter referred to as "the Carrier"), violated, and continues to violate, the currently effective schedule agreement between the parties, Article 4(d) thereof in particular, when, effective at 12:01 A. M., August 8, 1964, and continuing thereafter, the Carrier permitted or required all work covered by the scope of the said schedule agreement, as referred to in Article 1 thereof, to be transferred to and thereafter performed by employees of the New Orleans and Northeastern Railroad Company, another carrier which is a party to, and subject to, the terms of another and separate schedule agreement.

(b) The Carrier shall now be required to restore the said work to the employees of The Alabama Great Southern Railroad Company who are contractually entitled thereto pursuant to the terms of the said schedule agreement and who performed the same prior to 12:01 A. M., August 8, 1964.

(c) The Carrier be further required to assign the performance of the said work to the employees referred to in paragraph (b) of this claim, pursuant to the terms of the said schedule agreement.

(d) The Carrier be further required to compensate the individual claimants hereinafter named for all loss of compensation sustained by them as a result of the Carrier's violation of the said schedule agreement, beginning as of 12:01 A. M., August 8, 1964, and continuing thereafter until said violation ceases.

(e) The individual claimants herein are: Train Dispatchers I. G. Cash, G. C. Scrivenor, J. W. Hutcherson, J. E. Robinson, J. C. Kemp and G. C. Wilson, each of whom has been deprived of compensation under the terms of the said schedule agreement as a result of Carrier's violation thereof.

Please be advised that your decision is unacceptable and therefore the matter is being referred to President Coutts, of this organization, for further handling in accordance with the Railway Labor Act, as Amended and amendment to Article 11(b) of the agreement, said Memorandum of Understanding being effective August 1, 1962."

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier abolished the train dispatching office of the Alabama Great Southern Railroad, previously maintained at Birmingham, Alabama, and combined the dispatching territory involved, with train dispatching office of the New Orleans and Northeastern Railroad, at Hattiesburg, Mississippi.

The Claimant Train Dispatchers of the Alabama Great Southern Railroad allege that the Carrier deprived them of work to which they were entitled by delegating said work to train dispatchers in the employe of another carrier, to-wit; the New Orleans and Northeastern Railroad Company.

The Organization relies on Article 4(d) (July 1, 1921; Revised July 1, 1946) which reads as follows:

"(d) Seniority of train dispatchers is limited to the Company by which employed, and to one Superintendent's jurisdiction."

The Train Dispatchers urge that the Agreement involved herein is made by the Train Dispatchers with each of the five separate carriers which comprise the Southern Railway System, and that even though the Agreements are identical, they are in fact made by and between each of the individual Carriers with the Organization.

The Carrier argues that the Alabama Great Southern Railroad Company and the New Orleans and Northeastern Railroad Company are a part of the Southern Railway System, which is a group of railroads operated under one common management. All operations are integrated. They further argue that there is only one Agreement between the Association and the Southern Railway System and all lines are signatory to that one Agreement.

The Carrier further argues that it has the absolute right to merge and consolidate train dispatching territories. In support of this theory, it cites Article 4(m) (July 1, 1921; Revised November 1, 1927), which reads as follows:

"(m) When, for any reason, two or more dispatchers' offices are consolidated, seniority of such offices shall be pooled. Train dispatchers affected shall have prior rights to corresponding positions in these consolidated offices, carrying their seniority with them. After such rights have been exercised, seniority rules will govern. If consolidation results in force reduction, if qualified, oldest men shall have prior rights to positions remaining."

and Article 5(c) (January 1, 1947) which says:

"When all positions in a train dispatching office are to be abolished or where territories covered by separate seniority rosters are merged or separated, in whole or in part, not less than fifteen (15)

days' advance notice thereof will be given and the allocation of an exercise of seniority by train dispatchers involved shall be arranged by agreement between the parties hereto.

When changes are made in the location of any dispatching office, requiring train dispatchers to move from one town or city to another, not less than fifteen (15) days' advance notice shall be given to the train dispatchers affected. In such cases, time necessarily lost by regularly assigned train dispatchers who are retained in service as such will be allowed for traveling to the new point of employment, not exceeding two days, at the rate of pay of the last dispatchers' schedule position filled. They will also be furnished free railway transportation for their household goods, when it does not conflict with State or Federal laws, and reasonable actual expenses incurred for crating and drayage.

When territories covered by separate seniority rosters are consolidated, regularly assigned train dispatchers retained in service as such who are required to learn new territory will be allowed reasonable time within which to qualify without loss of pay; the Superintendent to be the judge of the time required."

First, we find that the terms used in the Agreement before us must be interpreted to indicate that the Train Dispatchers have an Agreement with each of the five signatory companies, even though the language is in fact identical in each agreement.

Secondly, we find that Article 4(m) and Article 5(c), relied upon by the Carrier, are only applicable to situations which arise in regard to intra-carrier operations.

Third, we find that Article 4(d) does not permit the Carrier to consolidate train dispatching territories on an inter-carrier basis.

Therefore, we hold that the Carrier violated the Agreement when it discontinued the Train Dispatching office of the Alabama Great Southern Railroad at Birmingham and merged the same with the Train Dispatching office of the New Orleans and Northeastern Railroad at Hattiesburg, Mississippi.

Claims B and C of the instant dispute are for the restoration of work. We believe that the awards of the Board are generally consistent in denying this type of relief. Therefore, we will dismiss those parts of the claim labeled B and C, in view of many prior awards which hold that this Board has no authority to grant such a request.

Claim D is for compensation of named Claimants, who are set out in claim E. We hereby limit any recovery to be received under claim D to that amount of money which will make each named Claimant whole for the duration of the claim. In this regard we adopt the make whole theory as enunciated by Referee Ives in Award 15460, and direct that the Carrier use said award as a guideline in determining the compensation to be allowed under Claim D as provided herein.

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 Agreement was violated.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.

CARRIER MEMBERS' DISSENT TO AWARD NO. 15477, DOCKET NO. TD-15787

We agree with the conclusion of the majority that claims (b) and (c) be dismissed. However, we do not agree that Article 4(d) of the controlling agreement, when interpreted in the light of Articles 4(m) and 5(c) and other evidence of record, supports the other conclusions of the majority. We, therefore, dissent to the extent indicated.

P. C. Carter
R. E. Black
G. L. Naylor
T. F. Strunck
G. C. White

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****Interpretation No. 1 to Award No. 15477****Docket No. TD-15787****Name of Organization:****AMERICAN TRAIN DISPATCHERS ASSOCIATION****Name of Carrier:****THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY**

Award No. 15477, Docket No. TD-15787 was adopted by the Third Division of the National Railroad Adjustment Board, April 7, 1967 and the Carrier was ordered to make said award effective on or before June 16, 1967.

A dispute arose between the Carrier and the Organization as to the proper method by which said award was to be applied. The Organization processed a request to this Board for an interpretation of the award.

The area of disagreement centers around the last paragraph of the Opinion of Board which states:

"Claim D is for compensation of named Claimants, who are set out in claim E. We hereby limit any recovery to be received under claim D to that amount of money which will make each named Claimant whole for the duration of the claim. In this regard we adopt the make whole theory as enunciated by Referee Ives in Award 15460, and direct that the Carrier use said award as a guideline in determining the compensation to be allowed under Claim D as provided herein."

In Award 15460, Docket No. TD-15682, Referee Ives said:

". . . Accordingly, we will not order restoration of the abolished positions, but will direct that claimants be awarded that amount of money which will make them whole for such loss of wages and expenses incurred as each may have suffered because of the violations. . . . Therefore, the Claimants are entitled to that amount of money which will make each whole from the date of the violation alleged in paragraph (a) of the claim to the date of voluntary retirement or the date of this award, whichever occurs earlier, . . ."

Therefore, we hold that the following answers are proper, in considering the questions raised by the request for interpretation:

- (1) The cut-off date for payments under this award is as of the date of the award or at such time as the Claimants gave up their rights as Train Dispatchers, whichever occurred earlier.
- (2) Expenses are properly compensable under this award, subject to the same limitations set forth in (1) above. The Claimants should be reimbursed upon the presentment of substantiated claims for such expenses.

Referee Don Hamilton, who sat with the Division as a neutral member when Award 15477 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1969.