



Award No. 15478
Docket No. TD-15788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY

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

(a) The New Orleans and Northeastern Railroad Company, (hereinafter referred to as "the Carrier"), violated, and continues to violate the currently effective schedule agreement between the parties, Articles 1, 4(d), 4(e) and 4(f) in particular, when, effective at 12:01 A.M., August 8, 1964, and continuing thereafter, the Carrier required work covered by the scope of the said schedule agreement, as referred to in Article 1 thereof, to be transferred from The Alabama Great Southern Railroad Company and be performed by employees of that railroad 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 all of said work to the employees of the New Orleans and Northeastern Railroad Company who are contractually entitled to perform the same pursuant to the terms of the applicable schedule agreement and who performed the said work 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 S. C. Hurt, O. A. Powe, J. G. Hudson, L. B. Johnson, M. B. Porter and B. R. Johnson, each of whom has been deprived of compensation under the terms of the said schedule agreement as a result of the Carrier's violation thereof.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated herein as though fully set out.

"Please refer to your file TD-20490 and your letter dated December 16, 1964 with same file number.

Your letter of December 16th, 1964 confirmed the decision you gave Mr. Garrett and my self in conference December 15th on the two claims presented to Supt. Wharton in my letters of August 29, 1964, declining said claims.

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: This claim was presented to the Board as a companion case to the dispute disposed of in Award 15477.

The Organization set forth the basis of the dispute on page ten of the original ex parte submission. Therein it is stated:

"One claim is asserted on behalf of the claimant train dispatchers in the employ of The Alabama Great Southern Railroad and involves their being deprived of work which they were, and are, contractually entitled to perform and delegated that work to train dispatchers in the employ of another carrier — New Orleans & Northeastern Railroad Company, subject to the terms of a separate agreement between that carrier and the claimant organization.

The other claim, asserted on behalf of the claimant train dispatchers in the employ of the New Orleans & Northeastern Railroad involves their being required to assume and perform work which is not within the scope of the schedule agreement between that carrier and the claimant organization — work which train dispatchers in the employ of The Alabama Great Southern Railroad were, and are, contractually entitled to perform."

Here, we are apparently concerned with that portion which is referred to, as "the other claim." The Organization urges in effect that the employees to whom the additional work has been assigned are entitled to compensation. We find no authority on this Board for such a contention.

However, there is an even more critical problem apparent in this case. The statement of claim is wholly inconsistent with the position of the Organization as stated in the submission.

In the instant case the Organization alleges that the New Orleans and Northeastern Railroad Company violated the agreement when it transferred work from the Alabama Great Southern Railroad Company. This is a mutually exclusive position when viewed with the claim in the companion case. Therein the Organization alleged that the Alabama Great Southern Railroad Company transferred the work to the New Orleans and Northeastern Railroad Company.

The prayer for relief in the instant case is for the restoration of work to the New Orleans and Northeastern Railroad Company employees, but the

claim is that the work was transferred from the Alabama Great Southern Railroad Company.

We are of the opinion that the claim as presented totally fails to state a cause of action against the Carrier and the same is hereby dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim dismissed.

**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.