



Award Number 17981

Docket Number TD-18455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

- (a) The Southern Pacific Company (Pacific Lines) (hereinafter referred to as "the Carrier") violated the Agreement currently in effect between the parties, Article 8(b), 8(c) and 8(g) thereof in particular, when, on October 2, 1968 an officer of the Carrier solicited and obtained written relinquishment of train dispatcher seniority rights from Train Dispatcher John D. Morgan, such action being one of coercion conducted in an atmosphere of threat and duress.
- (b) Carrier shall now be required to restore Claimant Morgan to service as train dispatcher with all rights unimpaired, and to compensate him for lost earnings due to Carrier's action from date removed from service as train dispatcher until restored to service as such. Said earnings to be based on the compensation of the regular position held by Mr. Morgan at the time of Carrier's improper action, and to include compensation for overtime, service on other than regular assignment, work on rest day and service away from headquarters to which he would have been entitled in accordance with applicable Agreement provisions.
- (c) The compensation claimed in paragraph (b) shall be subject to the payment of interest thereon at the maximum rate allowable in accordance with the statutes of the State of California.

OPINION OF BOARD: Claimant entered Carrier's service as telegrapher December 4, 1947 and resigned on June 3, 1948. He was re-employed as a telegrapher on the Los Angeles Division June 18, 1948. In June 1951 he traded positions and seniority with San Joaquin Division Telegrapher, R. W. Marshall with seniority of February 20, 1947. He established seniority date as train dispatcher on September 25, 1951.

On September 30, 1968 while Claimant was regularly assigned train dispatcher in the Carrier's Los Angeles, California train dispatching office, he was reported to be involved in a serious rule violation while working as a dispatcher. The nature of the alleged rule violation has been, in the record, assiduously factually undisclosed by either party. Neither party, however, has denied that there was a serious rule violation. From the record we must conclude that one did in fact occur and did involve Claimant.

The record reflects some disagreement on some unimportant details but the facts material and relevant, of probative value to the issue, are firmly established.

On October 1, 1968, Claimant was approached by his immediate supervisor concerning the alleged serious rule violation in Claimant's handling of train orders on the preceding day and was informed that a decision had been made to hold a formal investigation and hearing. The supervisor, it appears, gratuitously, then suggested that Claimant consider offering to Carrier relinquishment of his seniority rights as train dispatcher on the condition that Carrier continue him in service as a telegrapher; thus, to avoid an investigation of the alleged serious rule violation with its potential adverse consequences to Claimant. Claimant was told to think about it until the next day—to take it home and talk it over with his family.

On October 2, Claimant stated to his supervisor that the proposal was acceptable and signed the following statement which was witnessed by his Local Chairman:

"I hereby relinquish any and all rights that I may have as a train dispatcher on the Southern Pacific System to return to the ranks as a telegrapher on the San Joaquin Division, effective October 5, 1968.

/s/ JOHN D. MORGAN
John D. Morgan"

The statement was accepted on the same day by Carrier's Superintendent to whom it was addressed.

In paragraph 1 of the Claim before us Petitioning Organization alleges that "Carrier solicited and obtained relinquishment of train dispatcher seniority rights from Train Dispatcher John D. Morgan (Claimant) such action being one of coercion conducted in an atmosphere of threat and duress." (Emphasis supplied.)

As a culmination of the procedural handling of Petitioner's averment on the property the parties agreed:

"In conference of December 5, 1968 an agreement was reached providing for recommitment of the appeal to the division level in order that a hearing might be scheduled pursuant to the 'Unjust Treatment' provisions of Section 8(g) of the current agreement for the single purpose of determining whether the relinquishment of his rights as a train dispatcher by the employee identified above was coercively obtained."

The hearing was held on December 18, 1968.

From our review of the record we find: (1) the parties were afforded due process; (2) there is no evidence Carrier obtained Claimant's relinquishment of Claimant's train dispatcher seniority rights by "coercion conducted in an atmosphere of threat and duress"; and (3) there is evidence that after a reasonable period of thought Claimant, for reasons known to him, not disclosed in the record; and, for preservation of his own ends; and, assured continuity of the employer-employee relationship, did, of his own free will, relinquish his train dispatcher seniority rights. Under such circumstances Claimant's decision was of his volition at his own election, unimpaired by any contractual bar or procedure requirements.