Award No. 18703
Docket No. TD-19218

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The Louisville and Nashville Railroad Company (hereinafter referred to as "the Carrier"), violated the Schedule Agreement between the Carrier and its train dispatchers effective November 1, 1969, Article IV(a) thereof in particular, when it added the names and seniority standing of R. A. McDonald and J. Williams to the Cumberland Valley Division Train Dispatchers' seniority roster dated January 1, 1970.

(b) The Carrier shall now issue a corrected Train Dispatchers' seniority roster deleting the names and seniority standing accorded R. A. McDonald and J. Williams.

EMPLOYES' 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 into this Submission as a part thereof as though fully set out.

For the ready reference of the Board, Articles I(a), IV(a), IV(b), and IV(i), which are particularly pertinent to this dispute, are quoted here in full:

"ARTICLE I
SCOPE — DEFINITIONS
CLASSIFICATIONS

(a) Scope:

The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one (1) chief dispatcher in each dispatching office shall be excepted from the provisions of this agreement.

ARTICLE IV
SENIORITY DATUM

(a) Seniority Datum:

upon and in effect on the date of this agreement shall not be changed." This statement is given the importance and force of being displayed as the first paragraph of Article 4(a), and being so listed, is intended to convey the understanding that seniority standing of date of agreement was frozen and not to be changed; considering that listing of January 1969 had been in effect for eleven months, and not subject to change under Article 4(b) of agreement. The paragraph that follows was added to protect future seniority standing of those Extra Train Dispatchers who had not qualified for listing on roster of January 1, 1969, but who had qualified during 1969, and due to be listed on the next seniority roster after qualification; such as Mr. W. G. Hughes. This would not cover either Mr. McDonald, or Mr. Williams, and was not intended to do so.

Yours truly,

/s/ H. E. Harber
H. E. Harber,
Extra Train Dispatcher

CC: Mr. R. A. McDonald, CTD
Mr. R. J. Irvin, Jr., GC, ATD
Mr. L. C. Ross, OC, ATD

The protest was handled on the property in strict accord with agreement provisions and the handling is shown by carrier's exhibits "A" through "M".

(Exhibits not reproduced.)

OPINION OF BOARD: The contention of the Petitioner is that the Carrier was in error when it added the names and seniority standing of R. A. McDonald and J. Williams to the Train Dispatchers' seniority roster dated January 1, 1970.

Article IV (a) of the applicable Agreement which became effective November 1, 1969, reads in part:

"(a) Seniority Datum

Seniority standing of train dispatchers as agreed upon and in effect on the date of this agreement shall not be changed.

Seniority of train dispatchers who do not have seniority standing as such on the effective date of this agreement and those entering train dispatcher service thereafter shall date from the time service as such was first performed."

The Agreement in effect prior to November 1, 1969 (effective April 16, 1948 amended December 1, 1957), provided in part:

"Seniority standing as train dispatcher as shown on Division roster of the effective date of this rule shall not be changed. Those entering train dispatcher will not acquire a seniority date as train dispatcher until after they have performed an aggregate of 30 days of compensated service as train dispatcher when, if accepted, their seniority will begin as of the first day of compensated service as train dispatcher. Credit will be given for days worked in the twelve

months period preceding December 1, 1957, except this shall not operate to give any extra man seniority over a dispatcher with seniority dating prior to December 1, 1957. When that would occur, the man establishing seniority will be given dating just under the dispatcher holding seniority prior to December 1, 1957.

Qualified train dispatchers not having established seniority will be used in the order of their initial work as train dispatcher, when they are available."

The individuals named in the Statement of Claim were not included on the seniority roster in effect immediately prior to the Agreement of November 1, 1969. They were included on the January 1, 1970 seniority roster with datings of August 7, 1959 and June 24, 1964, respectively, one being shown as Chief Train Dispatcher and the other as Assistant Trainmaster, neither of which positions is included within the term "train dispatcher" under the Scope Rule of the Agreement.

It is well settled that seniority exists by virtue of agreement between employes and employer. (Award 16545.) It is also well settled that the Board must apply Agreement rules as written, and that the Board is not free to consider the equities of the situation.

Based upon our study of the entire record in the dispute, we find that the individuals named in the Statement of Claim had not established seniority under the Agreement in effect prior to November 1, 1969, and that they were not "train dispatchers" as defined in the Agreement when the Agreement of November 1, 1969 became effective, and that the inclusion of their names on the January 1, 1970 seniority roster was not authorized by any cited rule of the Agreement.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.

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