



Award No. 18858
Docket No. TD-19087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

PENNSYLVANIA-READING SEASHORE LINES

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

(a) The Pennsylvania-Reading Seashore Lines, (hereinafter referred to as "the Carrier"), violated and continues to violate the provisions of the Schedule Agreement between the parties, dated May 1, 1946, Regulations 3-H-1 (Part 1) and 3-I-1 (Part II) thereof in particular, WHEN, following receipt of letter of protest from the Organization dated March 12, 1969, it failed to take appropriate action to resolve or correct the Seniority status of Robert A. Radler.

(b) The Carrier initially violated the provisions of Regulations 3-I-1 (Part II), WHEN, effective August 12, 1964, it granted to Robert A. Radler, a leave of absence to accept a PERMANENT appointment for service with the Interstate Commerce Commission, said assignment having been as a result of a competitive examination.

(c) Carrier additionally improperly protected the seniority of Robert A. Radler and continued his name on the roster of Train Dispatchers, although formal request for such protection had never been specifically requested by Radler, nor specifically granted by Carrier under Regulation 3-H-1 (Part 1).

(d) Carrier has continued to violate both of the aforementioned Regulations by continuing to grant subsequent successive leaves of absences of nine (9) months' duration, thus protecting "indefinitely" the seniority of Robert A. Radler as both a Movement Director and a Train Dispatcher, despite the fact that he is permanently employed by the Interstate Commerce Commission and has no intention of returning to the service of the Carrier.

(e) Carrier shall now be required to discontinue the granting of further leaves of absences; to forthwith terminate the protection of seniority rights; and, to delete from the rosters of both Train Dispatcher and Movement Director the name of Robert A. Radler.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board, and

attached as Exhibit "N." Copy of Mr. Radler's letter dated March 24, 1969, indicating his desire to retain his seniority is attached as Exhibit "Q."

Under date of June 19, 1969, General Chairman Serock wrote the General Manager requesting a conference for the purpose of discussing the matter. Conference was held on July 2, 1969, Under date of August 21, 1969, General Manager Blosser wrote the General Chairman reiterating his position that the granting of the initial leave of absence and extensions was in accordance with the Agreement and had apparently had the concurrence of the Organization. Mr. Blosser further stated that the position Radler is occupying is "related to railroad work" and that there is no limitation in Rule 3-I-1(a) regarding the length of the leave of absence or any restriction against granting an extension. Copy of General Manager Blosser's letter dated August 21, 1969, is attached as Exhibit "O." Under date of August 21, 1970, the Organization filed with this Division notice of intent to file ex parte submission in this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 8, 1964 Mr. R. A. Radler was in active employment as a Movement Director on the Pennsylvania-Reading Seashore Lines. He possessed seniority as Movement Director from January 1, 1953, and as Train Dispatcher from April 10, 1953.

On January 8, 1964 Mr. R. A. Radler addressed a letter to Mr. H. D. Kruggel, then General Manager of the Carrier, advising that he had been notified that he had passed a Civil Service Examination for the position of Safety and Service Agent with the Interstate Commerce Commission and requested advice as to whether the Carrier would grant him an indefinite leave of absence without impairment of his seniority to accept an appointment with the Interstate Commerce Commission. General Manager replied on January 10, 1964 advising Mr. Radler that under the provisions of Rule 3-I-1 (a) if the position in question was related to railroad work his request would be granted. Mr. Kruggel further advised that the leave of absence would be limited to nine months with the right of renewal while occupying such position.

Under date of July 27, 1964 Mr. Radler wrote General Manager Kruggel that he had been ordered to Washington, D. C. for training prior to permanent appointment as Safety and Service Agent, Interstate Commerce Commission at Albany, N. Y. and requested that his leave of absence become effective August 12, 1964.

Under date of July 28, 1964, General Manager Kruggel replied to Mr. Radler advising that his request was approved in accordance with the provisions of Rule 3-I-1 (a) and that it would extend for a period of nine months, with the privilege of renewal.

Each nine months subsequent to August 12, 1964 Mr. Radler has requested renewal of the leave of absence and each time his request has been granted.

The Association contends that Carrier violated the Train Dispatchers' Agreement when it originally granted the leave of absence to Mr. Radler in July 1964; that Mr. Radler's seniority should be taken away from him and that the Carrier should discontinue granting further leaves of absence to Mr. Radler.

The controlling rule in this dispute is Regulation 3-H-1 of Part I of the Agreement insofar as Radler's seniority as Train Dispatcher is concerned, and the rule reads as follows:

"3-H-1 (a) A train Dispatcher shall, upon request, be given a leave of absence without impairment of seniority to perform Organization work, to accept an elective or appointive public office for which a competitive examination is not required, or to accept any appointive public office which is related to railroad work. (Emphasis ours.)

(b) When the requirements of the service permit, a Train Dispatcher shall, upon request, be granted a leave of absence for a limited time with the privilege of renewal.

(c) Except as provided in Paragraph (a) of this Regulation (3-H-L) a Train Dispatcher who, without the special permission of the General Manager, engages in other employment while absent on leave, shall forfeit his seniority under Part I of this Agreement and shall cease to be an employee of the Company."

The rule involving Radler's seniority as Movement Director is Regulation 3-I-1 of Part II of the Agreement, which is practically identical to Regulation 3-H-1, supra.

These rules provide that a Train Dispatcher (Movement Director) shall upon request, be given a leave of absence without impairment of seniority * * * to accept any appointive public office which is related to railroad work. There can be no question that the position of Safety and Service Agent with the Interstate Commerce Commission is a position "related to railroad work." Carrier acted properly and in accordance with these Rules when it granted Mr. Radler a leave of absence in the first instance for a period of nine months and granting his requests for renewal of the leave of absence each nine months subsequent to August 12, 1964. He, therefore was entitled to have his name retained on the Seniority Rosters and this part of the claim is denied.

The Association also contends that "It should be noted that all correspondence relating to 'leave of absence' confined itself ONLY with reference to Regulation 3-I-1 (Part II) and the class of Movement Director" and urges that inasmuch as there was no specific reference to Regulation 3-H-1 (Part I) that Mr. Radler has already forfeited his seniority as Train Dispatcher.

It is the Board's opinion that Mr. Radler, at the time he requested the leave of absence, possessed seniority as both Movement Director under Part II of the Agreement, and as Train Dispatcher under Part I of the Agreement. He happened to be occupying a position as Movement Director when he requested the initial leave of absence in 1964, which is why the Carrier referred to Regulation 3-I-1 (a); however, the leave of absence contemplated a leave of absence from any position in which he held seniority under the Agreements between the Carrier and the American Train Dispatchers' Association. Therefore, this part of the claim is also denied.

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 of the parties was not violated and, therefore, the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1971.