



Award No. 19081
Docket No. TD-19436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE AKRON, CANTON & YOUNGSTOWN RAILROAD
COMPANY

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

(a) The Akron, Canton and Youngstown Railroad Company, (hereinafter referred to as "the Carrier"), violated and continues to violate the provisions of the Schedule Agreement between the parties, Article 4 (i) thereof in particular; WHEN, effective June 12, 1969, it permitted Mr. M. A. Kilgore, who had voluntarily resigned from a promoted position, to improperly displace Claimant J. C. Spinelli from the Relief Train Dispatcher position which he held in the Akron, Ohio office.

(b) Carrier shall now be required to restore Claimant Spinelli to the Relief Train Dispatcher position which he held prior to the improper displacement.

(c) Carrier shall further be required to compensate Claimant Spinelli on a continuing basis, commencing on June 12, 1969 and continuing until the violation shall cease, in the following manner:

1. For each day Claimant was NOT permitted to perform ANY service for the Carrier during the regularly assigned work week of the Relief Train Dispatcher position (Saturdays through Wednesdays), one day's pay at pro rata rate of Train Dispatcher.

2. For each day Claimant performed other than Train Dispatcher service for the Carrier during the regularly assigned work week of the Relief Train Dispatcher position (Saturdays through Wednesdays), the difference between what Claimant was paid and the pro rata rate of Train Dispatcher.

3. For each day Claimant performed any service for the Carrier on the regularly assigned rest days of the Relief Train Dispatcher position (Thursdays and Fridays), compensation should be made at punitive (one and one-half times) rate of Train Dispatcher. Article 3 (a) applicable.

SENIORITY WHILE OCCUPYING OFFICIAL POSITIONS.

"(i) Train dispatchers, who are now filling or who may hereafter accept official position with the Company or The American Train Dispatchers Association, shall retain and accumulate seniority as train dispatchers. If they lose their official position for any reason, they may exercise their seniority in the office where seniority is held providing they do so within ten (10) days from date of losing official position. Failing to displace within the ten (10) day limit, they will go on the extra list as the senior extra dispatcher and may thereafter exercise their seniority by bidding on vacancies."

(Emphasis ours.)

OPINION OF BOARD: This case involves the exercise of seniority under Article 4(i) of the agreement by the Superintendent of Transportation with the result that Claimant was bumped from his position of Relief Train Dispatcher to the position of Car Distributor.

For convenience Article 4(i) is reproduced below:

"Train dispatchers, who are now filling or who may hereafter accept official positions with the Company or the American Train Dispatchers Association shall retain and accumulate seniority as train dispatchers. If they lose their official position for any reason, they may exercise their seniority in the office where seniority is held providing they do so within ten (10) days from date of losing official position. Failing to displace within the ten (10) day limit, they will go on the extra list as the senior extra dispatcher and may thereafter exercise their seniority by bidding on vacancies."

The record reflects that Claimant has a seniority date of December 17, 1967 while the former Superintendent of Transportation has a seniority date of June 8, 1941. The Petitioner contends that as the Superintendent of Transportation resigned his position he did not "lose" his position within the contemplation of the quoted Article. Thus, Petitioner contends, he could not exercise seniority in displacing claimant. It seeks as a remedy the return of Claimant to his position and payment to him of any monetary losses. As to the former Superintendent of Transportation Petitioner states he should be put on the extra list in accordance with the above Article.

The record reveals that the former Superintendent of Transportation held that position from February 1, 1969 until June 1, 1969. He had been Trainmaster-Chief Train Dispatcher from November 1, 1967. The record is not clear as to the positions he held before that. While Superintendent of Transportation he was beset by physical ailments which caused him to resign his post and exercise his seniority.

The record is replete with discussion as to the meaning of the words "lose", "loss" and "lost". Suffice it to say that to the extent that he no longer has the position he "lost" it. "Lost" has been defined, in one of its meanings, as "Parted with; gone out of one's possession." Moreover, the Article on which Petitioner relies is not restrictive in that it uses the words "for any reason."

We will not read an exception into the Article where there is none. We merely interpret it as it is written. In this connection, there is no provision

in the Article, in view of the words "for any reason", which forbids the exercise of seniority upon resignation.

In view of the foregoing we shall deny the claim.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.