

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23328
Docket Number TD-23060

George S. Roukis, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ Norfolk and Western Railway Company (VGN)

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

(a) The Norfolk and Western Railway Company (hereinafter referred to as 'the Carrier'), violated the controlling VIRGINIAN Railway Train Dispatchers schedule agreement, Articles 1(a), 1(b) 1, 4(d), 5(a) of and supplement No. 6 to said agreement in particular, When, effective February 1, 1978 it unilaterally assigned the position of Relief/Night Chief Train Dispatcher in its Bluefield, W. Va. train dispatching office to Mr. C. G. Hogan, a person not having previously established train dispatcher seniority pursuant to said agreement.

(b) Because of said Violation, the Carrier shall now compensate the senior qualified extra train dispatcher available, one (1) days' pro rata compensation for each Relief/Night Chief Train Dispatchers shift filled by Mr. Hogan until that position is properly bulletined, awarded and filled under the provisions of the Agreement, beginning with February 4, 1978.

(c) In the event any such claim date referred to above occurs as a sixth and/or seventh consecutive day of train dispatchers service for the involved Claimant, the claimed compensation shall be increased by one-half pursuant to Article 3(a) (ii) of the Agreement.

(d) The identity of the respective individual claimants shall be determined by a joint check of the Carrier's records."

OPINION OF BOARD: In this dispute, which is a companion case to Award No. 23327 involving the same Carrier and the same Organization, the adjudicative question is basically the same. In effect, did Carrier violate the Organization's Agreement, particularly Rules 1(a), 1(b) 1, 4(d), 5(a), and Supplement 6 when it assigned, effective February 1, 1978, the position of Relief/Right Chief Train Dispatcher in its Bluefield, West Virginia train dispatching office to an employee not covered by the Agreement? Similar to our findings in the aforesaid case, We find that the instant case is properly before us and thus concur with the Organization's position relative to Carrier's procedural objections. However, we agree with Carrier's position on the merits.

The position at issue was one of two non-agreement Chief Dispatcher positions at Bluefield, West Virginia, which were excluded from **Agreement** coverage, by Letter Agreement, dated July 8, 1976. By the terms of this Agreement, specifically, to wit, Paragraphs 2 and 6 respectively, the parties mutually agreed that the American Train Dispatchers Association (**ATDA**) represented **employees** holding seniority on Seniority Roster No. 2503 (Dispatchers Princeton-Deepwater Districts) would be afforded consideration in the filling of vacancies on either of the two current positions of Chief Dispatcher on the Pocahontas Division. It does not extend the **Organization's** Agreement to these positions. Moreover, Paragraph 6 pointedly states that the Letter Agreement supercedes the rules of existing Agreements which may be in conflict with it. It is not a narrowly encompassing provision, but relates to the **Chief** Dispatchers' positions, which were explicitly referenced in paragraph 2 and cannot be construed as bringing the two positions under the protective aegis of Agreement Rule 1(a). At the time the **July 8, 1976** Letter Agreement was written, **following** the abolition of the Princeton, West Virginia train dispatching offices, the intent of the parties, as evidenced by Paragraphs 2 and 6 of that instrument was to exclude the two Chief Dispatcher positions on the Pocahontas Division from the **seniority protection** of the **ATDA** Agreement. We cannot interpret this provision any other way. We must presume that the parties understood the import of the Letter Agreement and that they had the intention which its terms manifested. It is expressed in clear and **unambiguous** language and we must give it the meaning intended. Upon the record, we find no Agreement violation **when** the position of Relief/Night **Chief Train Dispatcher** at Bluefield was assigned to a non **ATDA** bargaining unit employee.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, **this 19th day of June 1981.**