

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25326
Docket Number TD-25165

Robert W. McAllister, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka & Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated paragraph (12) of the National Agreement dated May 30, 1979 (amending the May 27, 1937 National Agreement) when it arbitrarily combined the train dispatching districts or territories of the respective positions (#6514 and #6502) required to be separately established and maintained by the Railroad-Train Dispatcher Joint Committee in its decision in Docket No.6 dated June 27, 1980.

(b) Because of said violation, the Carrier shall now compensate the Claimants indicated in sub-paragraphs (1) and (2) below, one (1) day's pay at the rate applicable to Trick Train Dispatchers beginning December 26, 1981 and continuing until said violation ceases, in addition to all other earnings they may' have:

- (1) the regular assigned incumbent of combined Position #6502 and relief and unassigned Train Dispatchers who may perform service on such combined position during the claim period; and
- (2) the former regular assigned incumbent of Position #6514 and relief and unassigned Train Dispatchers who would have continued to perform service on Position #6514 during the claim period had it not been abolished and combined with Position #6502 after December 26, 1981.

(c) The identities of the individual Claimants entitled to the compensation requested in paragraphs (b)(1) and (b)(2) above are readily ascertainable from the Carrier's records on a continuing basis, and shall be determined by a joint check thereof.

OPINION OF BOARD: Effective December 26, 1981, the Carrier abolished Positions 6514 and 6502 and combined the respective dispatching territories into one position. As a result, the Organization filed a continuing claim on January 29, 1982, asserting this action contravened a final and binding decision by the "Committee" in Docket No. 6 under the provisions of the May 30, 1979, National Agreement between the American Train Dispatchers Association and participating Carriers.

The Carrier argues that this claim, based upon a violation of the 1979 Agreement, is not properly before this Board because the referred to Agreement contains a provision for the establishment of a disputes "Committee" • . . . for the express purpose of resolving any disputes arising out of the terms of such Agreement". This Board cannot agree with this position. The 1979 Agreement specifically states in Paragraph (5) that:

"Complaints growing out of subjects referred to in Paragraph (4) hereof shall be considered and disposed of by the parties hereto in the following manner."

The subjects referred to in Paragraph (4) are **numerous**, but essentially deal with conditions such as adequacy of force, rest days, extent of dispatching territory, etc. Paragraphs (6) and (12) set forth the agreed upon procedure for handling such complaints. Whether by majority vote or **an** alternative method chosen under Paragraph (11) A and B, the decision is binding upon the parties.

This is the procedure that was undertaken in June of 1980 and which resulted in a final and binding decision in **Docket No.6** which split the first trick of Position **No. 2**. The Carrier made the necessary changes which remained in effect until December 26, 1981. Unlike the Awards submitted in support of the Carrier's position, we do not find that the parties to the 1979 Agreement established procedures for settling any dispute arising out of the terms of the Agreement, **as** claimed by the Carrier. On the contrary, we find that the 1979 Agreement to be singularly silent with respect to the resolution of any dispute except the very limited complaints flowing from Paragraph (4). Once a dispute is resolved and a decision issued, the 1979 Agreement provides no avenue of review for the resolution of claims arising from the interpretation or application of the Agreement's terms. Furthermore Paragraph (15) is of particular note, and this Board finds it controlling. Paragraph (15) reads, as follows:

"Nothing herein shall supersede, alter, or modify the agreements entered into between the parties hereto concerning **rates** of pay, rules and working conditions, nor the adjustment of disputes arising out of such agreements entered into as provided for in the Railway **Labor** Act, as amended, or in any way supersede, take the place of, or contravene any of the provisions of the Railway Labor Act, as amended.'

Putting Paragraph (15) aside, the **Organization claims** the Carrier violated Paragraph (12) of the 1979 Agreement when it combined two train dispatching Districts. Amplifying this assertion, the Organization characterizes the issue as an interpretation or application of the 1979 Agreement. The Organization also acknowledges the dispute is not a complaint growing out of the subjects referred to in Paragraph (4) of the 1979 Agreement and further concedes the disputes "**Committee**" does not have jurisdiction over this matter. Nevertheless, the Organization in its reply Submission argues that Sections 8, **9a** and **9b** of Article VII - Discipline and Grievances, of the controlling Agreement do not apply. This Board is puzzled by this logic in that it is admitted that the 1979 Agreement provides no procedure for redress for matters other than addressed in Paragraph (4). Notwithstanding, the Organization claims it is properly before the Board. We agree and reemphasize that Paragraph (15) of the 1979 Agreement provides that venue, and this claim concerns rates of pay, rules, **and** working conditions, which require the examination of the controlling Agreement as well as the 1979 Agreement. If not, Paragraph (15) of the 1979 Agreement **would** be a nullity since such a comparison is a **prerequisite** to determining whether or not the 1979 Agreement or any resulting "**Committee**" decision thereunder superseded, altered or modified the controlling Agreement. This is the precise analysis necessary to properly decide the merits of this case as pleaded by both parties.

Accordingly, we hold this dispute is properly before us and that the applicable time limitations set forth in Article VII of the controlling Agreement **apply**. The record reveals that the Carrier declined the Organization's appeal on April 1, 1982. On April 22, 1982, the Organization informed the Carrier its decision was not acceptable. The **submission** of this dispute to the Third Division took place on March 14, 1983. Finding no request for the extension of the period in which to submit claims to appropriate tribunal for adjudication as set forth in Article VII (six months), the submission is beyond the time limits, thereby barring this 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 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

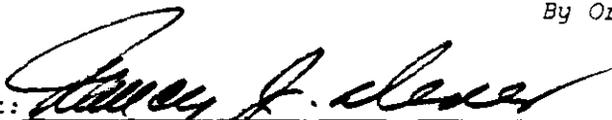
Claim is **barred**.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.