

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26315
Docket Number TD-26356

Rodney E. Dennis, Referee

(American Train **Dispatchers** Association

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

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

(a) The Norfolk and Western Railway Company ('Carrier' or 'NW') violated Item 1 of a Memorandum of Understanding dated October 29, 1974 between the former Akron, Canton, and Youngstown Railroad Company ('**AC&Y**') and the American Train Dispatchers Association ('**ATDA**'), when it transferred the duties of supervising all agents, operators and clerks in **Brittain** Yard, Carey, East Akron, Storehouse and Extra Board on the former **AC&Y** from the first trick chief train dispatcher to the Superintendent of Transportation-Chief Train Dispatcher effective **12:01** a.m. October 3, 1983.

(b) Because of said violation, the Carrier shall now compensate

- (1) the respective and successively senior train dispatcher on the former **AC&Y** Train Dispatchers' seniority roster as of **12:01** a.m. and **4:01** p.m. on October 3, 1983, and **12:01** a.m. and **4:01** p.m. on each date thereafter, one (1) day's pay at the daily rate determined from the monthly rate applicable to assistant chief-trick train dispatchers under the former **AC&Y** schedule working conditions Agreement, and
- (2) the respective and successively senior train dispatcher on the former **AC&Y** Train Dispatchers' seniority roster as of **8:01** a.m. on October 3, 1983 and **8:01** a.m. on each date thereafter, one (1) day's pay at the daily rate determined from 115% of the monthly rate applicable to assistant chief-trick train dispatchers under the former **AC&Y** schedule working conditions Agreement,

in addition to any and all other compensation payable to said Claimants for such dates, until said violation **ceases**."

OPINION OF BOARD: Pursuant to an Arbitrated Implementing Agreement dated September 16, 1983, all train dispatching work on the Akron, Canton and Youngstown Railroad was to be transferred to the Norfolk and Western Railway's train dispatching office in Brewster, Ohio, effective October 3, 1983. Effective the same date, the names and seniority dates of former **AC&Y** Train Dispatchers **were** dovetailed into the Brewster Train Dispatchers' Seniority Roster.

This dispute arose when the Employees charged that certain work reserved to the **AC&Y** Train Dispatchers **was** not transferred to the Brewster office, October 3, 1983, but was instead assigned to a Carrier Officer.

The Carrier raised a multitude of defenses during on-property handling and before this Board, on both procedural and substantive grounds. In view of our decision based on one of these procedural issues, **no** useful purpose would be served by addressing the many other issues raised.

Article I of the September 16, 1983 Implementing Agreement provided, in pertinent part:

"...train dispatchers on the **AC&Y District** dispatchers office roster whose names do not appear on the Brewster train dispatchers roster will be dovetailed into the Brewster train dispatchers roster in accordance with their seniority dates, and such train dispatchers shall thereafter be subject **to** the provisions of the former Wheeling and Lake Erie Agreement effective November 1, 1947 as amended and supplemented...."

The Claimants on whose behalf the Claim is filed have no standing on the former **AC&Y** Seniority Roster, but were instead made subject to the **W&LE** Agreement. The contractual provision upon which the Claim is founded no longer applies to these Claimants.

While the Employees argued on the property that the act of dovetailing these Claimants into the **W&LE** Brewster Roster does not remove their names from the former **AC&Y** Roster, such argument does not accord with the very purpose of the Implementing Agreement. **While** the Implementing Agreement did not explicitly terminate the **AC&Y** Agreement, it did not explicitly preserve it, either. But the Implementing Agreement did remove the Claimants from the **AC&Y** Agreement's coverage.

Further, it is noted that in exchanges on the property, the Carrier pointed out:

"...The **AC&Y** Train Dispatcher's Seniority Roster was discontinued at the time these train dispatching forces were coordinated into Brewster, Ohio, and accordingly no such roster was issued January 1, 1984. Further, no protest was made within the time limits set forth in Article 4(b) of the **AC&Y** ATDA Schedule Agreement. Therefore, as of the date of coordination, and at the very latest January 1, 1984, there were no dispatchers on the former **AC&Y** Seniority Roster and accordingly there were no claimants from that time on."

That argument was not answered on the property nor in the Employees' Submissions. It therefore is considered factual.

In short, even if the merits of this dispute were found to warrant a sustaining Award, there are no Claimants with any standing to enjoy the Agreement's benefits. We shall therefore decline to render a decision on the merits and the Claim will be dismissed without addressing either the merits or the other procedural issues.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all **the** evidence, finds and holds:

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

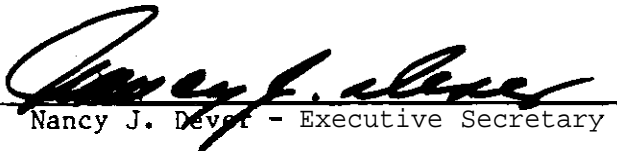
That the Agreement upon which the Claim is founded no longer applies to Claimants.

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 13th** day of May 1987.