

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

DISPUTE.—"Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis-Southwestern Railway Company of Texas that the name of H. C. Cross be removed from Telegraphers' Seniority roster."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, find that:

The carrier and the employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. A hearing was had. The Third Division failed to agree upon an Award because of a deadlock. Paul Samuell was selected as its Referee to sit with the Division as a member thereof and make an Award.

H. C. Cross entered the service of the carrier as telegrapher on December 3, 1914, and remained in the service covered by the Telegraphers' Schedule Agreement continuously until May 6, 1920, when he was promoted to a position of train dispatcher. Train Dispatcher positions are not covered by Telegraphers' schedule agreement, but employees so promoted are permitted to retain and accumulate seniority while occupying a position of train dispatcher in accord with Article 20-1 of the agreement reading:

"Any employe holding position covered by this agreement promoted or transferred to position of train dispatcher * * * will retain and accrue his seniority as earned of that date from the effective date of the agreement, this not to be retroactive * * *", and

Article 19-3 of the Telegraphers' Agreement reading:

"Employees granted leave of absence under the provisions of paragraph 19-1 of this Article will be permitted to work for other railroads or telegraph companies or other lines of business when approved in writing by the Superintendent and General Chairman, provided they keep the Superintendent and General Chairman advised in writing as to their address, and report for duty within fifteen (15) days from time of notice or give satisfactory reason for not doing so."

From September 1, 1928, to December 1, 1928, Cross was absent from the service of the carrier as a dispatcher, during which period he was employed in other lines of business not connected in any manner with the carrier. He did not request or secure the approval of the General Chairman of the Telegraphers' Committee to engage in another line of business, but did procure approval of the Division Chairman of the American Train Dispatchers' Association as well as the Superintendent of the carrier.

Since August 1, 1934, Cross has not been engaged in the service of the carrier as a dispatcher but has become connected with the Carlton Lumber Company, of Tyler, Texas, and has been devoting all of his time to that firm. He has procured leave of absence from the Division Chairman of the American Train Dispatchers' Association as well as the Superintendent of the carrier.

The petitioner in this dispute maintains that Cross' name should be removed from the Telegraphers' Seniority Roster because of his failure to secure the approval of the General Chairman of the Order of Railroad Telegraphers; that while the Order has nothing to do with Cross' seniority rights as a train dis-

patcher, that the Order of Railroad Telegraphers is a party to the contract with the carrier which governs the seniority standing of Cross on the Telegraphers' Seniority Roster, and that in order to retain or accumulate seniority rights under the Telegraphers' Agreement it was the duty of Cross to comply with the provisions of the Telegraphers' Agreement; that while the representatives of the Dispatchers' Association have authority to approve a leave of absence to Cross from a position covered by their contract, they are without authority to extend such leave of absence to cover his rights under another contract.

This Division cannot agree with such contention. Article 20-1 says in part: "*Any employe holding position covered by this Agreement, promoted or transferred to a position of Train Dispatcher will retain and accumulate his seniority*", etc. Rule 1-1 of the Telegraphers' Agreement reads in part as follows: "The following rules and rates of pay will apply to all *Telegraphers* * * * whose positions are specifically listed in Article 28 hereof. The employes covered by this scope rule will be referred to as employes." Therefore, it is reasonable to say that the term "employes" refers to Telegraphers, and that it would be proper for the purpose of clarity to interpret the Rule as follows: "Any Telegrapher * * * transferred to position of Train Dispatcher * * * will retain and accumulate his seniority", etc. There are no words of limitation placed in Article 20-1. This Rule does not say that "any employe holding position covered by this Agreement, promoted or transferred to position of Train Dispatcher * * * will retain and accumulate his seniority *only in the Train Dispatchers' Association unless he obtains leave of absence from the Division Chairman of the Order of Railroad Telegraphers*", although such interpretation or construction must be placed upon such Rule in order to sustain petitioner's position.

It is evident that Rule 20-1, contemplated, so far as language is concerned and can be used, that seniority in the Dispatchers' Association will likewise be reflected in or carried back to the Telegraphers' Roster. There is nothing unnatural or inequitable in such a Rule, and it would be improper for this Division to so hold in view of the clear language used in the Agreement.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 4th day of November 1935.