Award No. 601
Docket No. TD-566

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim by the American Train Dispatchers Association representing the Train Dispatchers in the employ of the Louisville and Nashville Railroad Company, that the positions of Assistant Chief Dispatcher which were, without due process, abolished by the carrier and the work theretofore performed by such Assistant Chief Dispatchers assigned by the carrier to others outside of the Train Dispatchers' Agreement, be restored and filled in accordance with the rules of the Agreement between the parties."

STATEMENT OF FACTS: There is in effect an agreement between the parties the scope of which includes the positions of Assistant Chief Dispatchers. Former agreements dating back to March 1, 1922 also covered those positions, so that from that date to the present time those positions have been specifically covered by agreement between the parties.

Assistant Chief Dispatcher positions have been in existence on this railroad at least since 1919, and they were in existence when the first agreement was entered into by the parties, March 1st, 1922, so there can be no question that they were negotiated into that agreement at that time and have been covered by agreement ever since.

In 1923, there were ten such positions, but the number has been gradually reduced by the carrier until but one such position (Middlesboro) remains at the present time, and that one position is recognized as coming under the agreement. As each position was abolished, it is claimed by the organization that some of the work performed by the assistant chief dispatchers, which had previous to the creation of such positions been performed by day or night chief dispatchers, remained and has been assigned by the carrier to employes not covered by the current agreement.

POSITION OF EMPLOYES: It is the position of the employes that work once negotiated into an agreement cannot, by unilateral action of the carrier, be removed from the scope of the agreement and assigned to employes not covered by the agreement;

That all former positions of Assistant Chief Dispatcher be restored and assigned to employes covered by the agreement in accordance with the rules thereof, and;

That such positions and work be maintained under the agreement until removed therefrom by negotiation and agreement between the parties.

POSITION OF CARRIER: The position of the carrier is expressed in part as follows:

These men were employed and had been employed for a number of years, as needed, for the prime purpose of handling car distribution during the extreme shortage of cars with the exception of one job at Paris, Ky., which was put on when the double tracking was done on that division, and there were numerous trains.

By the year 1931 not only had the car shortage on railroad passed, but there was a vast surplus of cars, which has existed since that time, except for intervals during the past few months. The double tracking mentioned has also been completed.

While these men, as stated, were put on primarily to handle the car supply, they had other duties. * * * *, as they were assigned other duties by the chief dispatcher, they were given the title of Assistant Chief Dispatcher and the pay practically doubled that of telegraphers, it being $9.97 per day as against $9.58, pay of dispatchers at that time.

Business reached the stage where these men were no longer needed, and they were gradually dispensed with * * * *, with the exception of one position * * * *.

It was essential to the survival of the Louisville and Nashville Railroad that it reduce its expenses in line with its earnings. * * * *.

The positions in question were abolished in good faith, during the range of time extending over a period of four years or from 1927 to 1931. The position were abolished because they were no longer needed.

The carrier also contends that this is not a pending case within the provision of the Railway Labor Act, Section 3, Paragraph (i), and the Adjustment Board has no jurisdiction in the case for the reason that the alleged dispute is not a "grievance" as contemplated by that provision of the Act.

OPINION OF BOARD: At the threshold the jurisdiction of the Board is questioned on the ground that the case does not present a pending and unadjusted dispute as defined by Section 3, paragraph (i), of the Railway Labor Act. This arises from the fact that the employes assert an erroneous legal theory. As indicated by the facts, the positions in question were abolished between the years 1927 and 1931 and no protest was made concerning any alleged violation of the then subsisting agreement, nor until May 16, 1936, after a new agreement was made, dated April 1, 1936. The claim is not for reparation and would certainly be without the jurisdiction of the Board in the circumstances if it was. But the claim really goes farther and spells out continuing violation not only of the previous agreements but of the current agreement in the failure to accord to the class of employes involved the work stipulated for them by the schedule—of this claim the Board clearly has jurisdiction. It is, of course, immaterial whether there was involved a violation of the past agreements, as if there is such violation it would likewise be of the current agreement, and consequently the historic facts are merely evidentiary.

The claim of the employes is, in the main, an assertion that since there were ten employes in the class involved at one time, the positions of which were enumerated in the then existing agreement, that the only way these positions could be abolished would be by negotiation. In effect it is stated that having been negotiated into the agreement they would have to be negotiated out. This contention, however, is not sound. It is well settled by a long line of decisions that a carrier is free to abolish a position when the work no longer exists; on the other hand, it is likewise well settled that where work remains it must be accorded to employes of the class to which the agreement applies. See awards 385, 386, 367, 368 and 553 of this Division.

From this it follows that if work belonging to assistant chief dispatchers, whose positions have been abolished, is now being done by other employes, or if such work is being done by other employes even where positions have not been abolished it would amount to a violation of the agreement. The difficulty confronting the Board is that the claim as made below was not general in this respect, but, on the contrary, related specifically to the following positions:

Knoxville	1 position
Middlesboro	2 positions
Paris, Ky.	2 positions
Pensacola	1 position
Ravenna	2 positions

and even at the time the claim was made, it was indicated that the dispatchers' offices at Paris and Pensacola had been completely abolished, and that there was still one assistant chief dispatcher at Middlesboro. It appeared that there had been several mergers of divisions, from which it is possible the work formerly done at Paris and Pensacola may be being done elsewhere at present. The evidence offered in support of the claim was general in its nature, except that specific details were given with respect to Birmingham. Birmingham, however, was not involved in the claim presented to the management, and has not been progressed through the channel provided by the Act, and consequently is prematurely brought in before this Board.

In all circumstances, all the Board can do is to remand the case for development of the specific facts concerning the stations named in the original complaint. If the petitioner considers there is any violation of the agreement at other points, it will be necessary to handle claim regarding them through the usual channels with the management before it will be cognizable with this Board.

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 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

That the case be remanded for development of the specific facts surrounding the points involved in the original dispute.

AWARD

Claim remanded in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1938.