

Award No. 2676
Docket No. TD-2671

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that the Central of Georgia Railway Company violated the Dispatchers' Agreement:

(1) When on January 11, 1942, it failed to fill the position of chief train dispatcher, Columbus Division, Columbus, Georgia office as provided for in Article 1 (a) of the Agreement.

(2) The position shall now be awarded, as required by the Agreement, to the senior qualified train dispatcher on the Columbus Division seniority roster, and

(3) All train dispatchers on the Columbus Division seniority roster adversely affected by reason of the violation shall now be compensated for all monetary loss sustained from January 11, 1942, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On October 1, 1931, the position of Chief Clerk-Chief Train Dispatcher was created in Columbus, Georgia, in the Division Superintendent's Office, and Mr. R. A. Brimm was assigned to the position. The duties of this position involved the supervision of the clerical forces in the Superintendent's office and all Train Dispatchers on the Columbus Division. The salary of the joint position was \$338.33 per month.

The above arrangement continued until January 11, 1942, when, as a result of a large increase in volume of work, the Carrier abolished the position of Chief Clerk-Chief Train Dispatcher and established two new positions in the office titled "Chief Train Dispatcher" and "Chief Clerk to the Superintendent." All of the clerical duties that normally appertain to the position of a chief clerk and the supervision of clerical forces were assigned to the new position of chief clerk. All the duties and supervision of the chief dispatcher class, covered by the Scope Rule of the Train Dispatchers' Agreement, were assigned to the new position of Chief Train Dispatcher.

Effective with the new arrangement, the carrier arbitrarily appointed Mr. R. A. Brimm, the former occupant of the joint position, to the new position of Chief Train Dispatcher at a salary of \$325.00 per month. Mr. Brimm is not a train dispatcher, does not know telegraphy, and his name does not appear on any dispatchers' seniority roster. The arbitrary action of the Carrier in assigning him to the position was a direct violation of Article I—Scope of the Train Dispatchers' Agreement.

"who are, under the rules of this agreement, entitled to seniority as train dispatchers"—seems to recognize that the Company is not obligated to appoint a Chief Dispatcher (one on each Division) from within the ranks of those covered by the Dispatchers' Agreement. This portion of the rule also stipulates that in filling such positions (Chief Dispatchers) "senior train dispatchers on the roster involved who have the necessary ability and capacity will be given due consideration."

It will be noted that Mr. Brimm was appointed Chief Dispatcher on May 16, 1931, and has continued to hold this position since that date and, therefore, there was no vacancy for a Chief Dispatcher, as he merely reverted back to his original position when on January 11, 1942, the positions of Chief Dispatcher-Chief Clerk were separated.

POSITION OF CARRIER: Carrier contends that there has been no violation of the Dispatchers' Agreement effective April 1, 1938;

That Mr. Brimm has held the position of Chief Dispatcher on the Columbus Division since May 16, 1931, a period of over 12 years, and has given satisfactory service to this Company;

That Mr. Brimm was appointed Chief Dispatcher prior to the time that the dispatchers were covered by the present Agreement (effective April 1, 1938) and that he held the position of Chief Dispatcher at the time the Agreement was negotiated and has continued to hold the position since that time without protest from the Employes except in the instant case.

The Carrier contends that there has been no new position created and that there has been no change, whatsoever, in the portion of the duties assignable to a chief dispatcher, but that Mr. Brimm has only been relieved of work in connection with position of Chief Clerk.

There is no merit, whatever, in this claim and, therefore, it should be denied.

OPINION OF BOARD: On May 16, 1931, R. A. Brimm was designated chief train dispatcher, Columbus Division, Columbus, Georgia. On October 1, 1931, due to a decrease in business, the duties of the chief clerk to the superintendent on the Columbus Division were assigned to the chief train dispatcher's position. Brimm continued to perform the duties of chief train dispatcher and the duties of chief clerk to the superintendent until January 11, 1942. On April 1, 1938, the Dispatchers' Agreement now in effect was negotiated. It is not disputed that Brimm properly retained his position as chief train dispatcher after the Dispatchers' Agreement was made.

It is conceded that Brimm's position is the only chief dispatcher's position on the division and, as such, it is excepted from the provisions of the Agreement other than provided for by Note to Article 1. The contentions of the employes' organization are based on that part of Article 1 (a), current agreement, which provides that "in filling such positions senior train dispatchers on the roster involved who have the necessary ability and capacity will be given due consideration." The application of this rule is dependent on the question whether the position of chief train dispatcher was one to be filled at the time the acts took place out of which the dispute arose.

The facts giving rise to the dispute are that on January 11, 1942, the carrier removed the duties of chief clerk to the superintendent from the joint position and assigned them to the chief clerk to the superintendent, a position it at that time reestablished. The employes' organization contends that this constituted the abolition of the position of chief clerk-chief train dispatcher and the creation of the separate positions of chief clerk and chief train dispatcher. The carrier contends that the original position of chief train dispatcher was in no way affected other than that the duties of chief clerk which had been assigned to the chief train dispatcher when business was depressed,

were taken from that position and assigned to the chief clerk to the superintendent, a position that was at that time reinstated due to the increase in business brought on by war conditions.

The record shows that Brimm continued in the position of chief train dispatcher without any hiatus in the performance of his duties or in the drawing of his pay. There is no evidence, other than the bare assertion of the employes' organization, that the carrier abolished or intended to abolish the position of chief train dispatcher either when the duties of chief clerk to the superintendent were assigned to the position or when they were removed from it. It seems clear to us that the carrier intended that Brimm was primarily at all times a chief train dispatcher with other duties assigned to and removed from the position as business decreased or increased in volume. We think the evidence fails to sustain the contentions of the employes' organization that the position of chief train dispatcher was ever abolished subsequent to May 16, 1931, and, consequently, that such position was to be filled on or after January 11, 1942, within the meaning of Article 1 (a) of the current agreement. This being true, no basis for a claim exists.

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 record does not sustain the contentions of the employes' organization that the position of chief train dispatcher was abolished and that Article 1 (a) of the current agreement is not, therefore, applicable.

AWARD

Claims (1), (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.