

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
LOUISVILLE & NASHVILLE RAILROAD CO.

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

(a) The Louisville & Nashville Railroad Company failed to comply with the intent of Article 5-(h) of the current schedule agreement on rules when on or about November 9, 1945, this Carrier permitted Mr. J. C. Kimbrough to exercise a displacement right and displace from his position another regularly assigned train dispatcher irrespective of the fact that because of circumstances involved the rules of the current agreement, and specifically Article 5-(h) thereto, did not accord Mr. Kimbrough such a displacement right, and

(b) The Louisville & Nashville Railroad Company shall now remove Mr. Kimbrough from the position on which he was wrongfully permitted to place himself; permit employes who were displaced from their positions by reason of the above stated noncompliance by the Carrier with the terms of the Agreement to return to their positions, and compensate employes adversely affected thereby for all monetary loss sustained by them from the date the violation of the terms of the Agreement, as above set out, occurred until compliance therewith is made effective.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing working conditions, entered into between the parties to this dispute, became effective April 1, 1936, and Article 5-(h) thereof reads as follows:

"Anyone holding seniority as train dispatcher may exercise displacement rights in accordance with and in the manner prescribed by these rules, under the following conditions which must be done within ten (10) days, unless prevented by sickness or proper leave of absence in which event it must be done within ten (10) days after he returns, viz:

"(1) When he is removed to make way for a senior train dispatcher.

(2) When his position is abolished or changed as per Section (i) of this Article, or when there is a change of one hour or more in the starting or ending time of his position."

(Section (i) mentioned in above quoted Article 5-(h) has to do with force reductions which result in train dispatchers becoming displaced from their positions.)

such a decision, and Mr. Kimbrough and others who might later find themselves in a similar situation would suffer from a decision sustaining the contentions of the Association. Those who were displaced when Mr. Kimbrough returned have no basis for complaint; they enjoyed the benefits of advancement in the interim and, upon displacement, they returned to the status they would have occupied all the while, had not Mr. Kimbrough been promoted in the first instance.

Clearly from the foregoing, the Association is endeavoring to change a recognized and agreed interpretation of a rule. This should only be done through negotiation in which previously acquired rights might be given proper consideration.

OPINION OF BOARD: The claim presents the question whether it was a violation of the Agreement for the Carrier to permit J. C. Kimbrough, holding seniority rights as a train dispatcher, to displace a junior train dispatcher when it removed him from the position of Chief Train Dispatcher. In considering the question it must be kept in mind that seniority rights exist only by reason of contract between the Organization and the Carrier. The individual has no inherent right of seniority that the Carrier is bound to recognize. The extent and limitation of the individuals rights are to be determined from the terms of the agreement entered into by the carrier and the organization.

Bearing this in mind, we quote the pertinent provisions of the controlling Agreement:

ARTICLE V. (d) "Train dispatchers accepting official positions with either the Louisville & Nashville Railroad or the American Train Dispatchers' Association will not forfeit seniority rights."

ARTICLE V. (h) "Anyone holding seniority as train dispatcher may exercise displacement rights in accordance with and in the manner prescribed by these rules, under the following conditions . . . , VIZ:

- (1) When he is removed to make way for a senior train dispatcher. . . ."

(Emphasis supplied.)

That the position of Chief Train Dispatcher is an official position in contemplation of Article V (d), we think, must be conceded; and, if that provision stood alone, Kimbrough, upon being relieved of the position of Chief Train Dispatcher would have been entitled to displace any junior train dispatcher. But, it does not stand alone. The provision, therefore, that "train dispatchers accepting official positions . . . will not forfeit seniority rights," must be construed in the light of such limitations as may be placed upon seniority rights by other provisions of the Agreement relevant to the subject. (Emphasis supplied.)

Now, Article V (h) explicitly places a limitation on the exercise of seniority rights. The limitation applicable to the facts before us is expressed in clear and unequivocal terms: "Anyone holding seniority rights as train dispatcher may exercise displacement rights in accordance with and in the manner prescribed by these rules . . . viz: (1) When he is removed to make way for a senior train dispatcher." (Emphasis supplied.) To hold that the limitation so expressed did not apply to all holding seniority as train dispatcher would be to distort the meaning of unambiguous language. It is clear, under the facts disclosed by the record, that the Carrier, in permitting Kimbrough to displace Hale, violated the Agreement. See Award No. 187. The Carrier invokes the doctrine of past practice, acquiesced in by the Organization, as binding upon the parties in construing the rules involved. As a matter of fact, under the record, it cannot be said unequivocally that the Organization has acquiesced in the past practice of the Carrier. In any event, the doctrine of past practice has no application when the terms

of an agreement are, as in this instance, clear and unambiguous. See Awards Nos. 561, 1844.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1947.