

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

- (a) The Missouri Pacific Railroad acted contrary to the intent of rules which the parties to this dispute had agreed upon which became effective August 1, 1945, when the position of chief dispatcher in the Monroe, Louisiana office, made vacant on December 16, 1945, by action of the carrier, was filled by appointment thereto of Mr. J. F. Serrett.
- (b) The Missouri Pacific Railroad acted contrary to the intent of rules which the parties to this dispute had agreed upon which became effective August 1, 1945, when the position of night chief dispatcher in the Monroe, Louisiana office, made vacant on December 16, 1945, by action of the carrier, was filled by the appointment thereto of Mr. A. R. Brown.
- (c) The Missouri Pacific Railroad acted contrary to the intent of agreed upon rules which became effective August 1, 1945, when the position of night chief dispatcher in the Monroe, Louisiana office, made vacant on January 16, 1946, was filled by the appointment thereof of Mr. T. O. Weeks, and
- (d) The Missouri Pacific Railroad be required to now fill the positions here in question in the manner prescribed by the above mentioned agreed upon rules, and be required to compensate such trick dispatchers who sustained monetary losses by reason of the carrier's wrongful action above described.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 16, 1945, Mr. J. F. Serrett held the position of chief dispatcher (now titled Division Trainmaster on this property) in the Little Rock, Arkansas train dispatchers' office on the Arkansas Division, but on December 16, 1945, and in accordance with an official Notice issued by the Carrier under that date, Mr. C. W. Ivey was placed on this chief dispatcher position. Copy of said Notice is attached hereto as Exhibit TD-1.

Prior to December 16, 1945, Mr. A. R. Brown held the position of chief dispatcher (now titled Division Trainmaster on this property) in the Monroe, Louisiana train dispatchers' office on the Little Rock, and Louisiana Divisions, but on December 16, 1945, he was removed from this position, and in accordance with an official Notice issued by the Carrier under that date, Mr. J. F. Serrett was appointed to chief dispatcher (now titled Division Trainmaster on this property) to fill the vacancy caused by the Carrier having

subject to the agreement when filling such positions, and it is the position of this Carrier that in the absence of such vacancy the rule can have no application to the filing of the positions.

The attention of your Board is directed to the definition of the word "vacancy" as contained in Funk & Wagnalls Collegiate Standard Dictionary, which reads:

"An unoccupied post, place, or office; a place destitute of an incumbent."

In the same dictionary the word "vacant" is defined as:

"That is **empty** which contains nothing; that is **vacant** which is without that which has filled or might be expected to fill it; **vacant** has extensive reference to rights or possibilities of occupancy."

In further support of the Carrier's position in connection with the plain meaning of the important words contained in Rule 2 of the Appendix, upon which the Employees rely, the Board's attention is called to the definition of the word "vacancy" in Webster's Twentieth Century Unabridged Dictionary, which reads:

"The state or condition of being unoccupied, empty or vacant . . . An unoccupied or unfilled post, position or office; a post, situation or office destitute of a person to fill it, as a **vacancy** in the judicial bench."

Also, the word "vacant," appearing in the same dictionary:

"Not occupied with an incumbent, tenant or official; . . ."

At no time was any one of the positions in question unoccupied or destitute of an incumbent and the Employees are, therefore, without support under the existing rules for the protest which they have made.

Claim (d) in the Employees' Statement of Claim is vague, indefinite and uncertain. Particularly objectionable is that part of the claim which reads:

". . . and be required to compensate such trick dispatchers who sustained monetary losses by reason of the carrier's wrongful action above described."

At no time have the Employees stated or designated any trick dispatcher who sustained monetary losses, and the insertion of such a claim would, if sustained, give rise to additional controversies and the Carrier would be at a loss to know how to apply any award of your Board if it should commit the error of sustaining such contention on the part of the Employees. It is the position of the Carrier that the Employees should be required to show to your Honorable Board who sustained losses, and in what amounts, before asking your Board to issue a sustaining award on any such claim. The Carrier regards the complaint and claims of the Employees facetious and without any basis or foundation under the meaning and intent of any of the rules in the agreement. The Carrier, therefore, respectfully requests your Honorable Board to deny the complaint and claims herein presented.

(Exhibits not reproduced.)

OPINION OF THE BOARD: The Association claims that the Carrier created several vacancies in the position of Chief Dispatcher in its Monroe, La., office and did not fill them according to the requirements of the effective agreement between the parties that are applicable thereto. These claimed vacancies occurred as follows:

On December 16, 1945, when A. R. Brown was transferred from the position of Chief Dispatcher in the Monroe office and assigned to the posi-

tion of Night Chief Dispatcher and J. F. Serrett, the Chief Dispatcher at Little Rock, Arkansas, was transferred to the position of Chief Dispatcher in the Monroe office.

On December 16, 1945, when J. A. Austin was demoted from the position of Night Chief Dispatcher in the Monroe office and assigned to the position of a Trick Train Dispatcher and A. R. Brown, the Chief Dispatcher in that office assigned to the position of Night Chief Dispatcher.

On January 16, 1946, when A. R. Brown was demoted from the position of Night Chief Dispatcher in the Monroe office and assigned to the position of a Trick Train Dispatcher and T. O. Weeks, assistant Operating Rules Instructor, assigned to the position of Night Chief Dispatcher.

The Association asks that the position be now filled in the manner required by the rules of the parties' agreement, effective as of August 1, 1945, and compensation for those who sustained losses by reason thereof.

It was claimed for Carrier that the question is now moot because of the parties adopting an appendix agreement effective August 1, 1947, which, by Rule 7, fully sustains its present contentions. The Carrier's position, as to the merits, would find support in the present appendix agreement between the parties effective as of August 1, 1947, and adopted pursuant to the recommendations of the Emergency Board appointed to investigate an unadjusted dispute between the Carrier and certain of its employees represented by the American Train Dispatchers Association, particularly Rule 7 thereof. However, this claim arose under the appendix agreement, effective August 1, 1945, and whatever rights the parties adversely effected may have, they became established thereunder either as of December 16, 1945, or January 16, 1946, and they have a right to have those rights determined. Those questions are not moot nor are the awards cited applicable to the situation here.

Carrier contends that the changes made constitute transfers and did not create vacancies. We do not think this contention can be sustained. A vacancy, within the intent or meaning of a collective agreement, occurs whenever a person holding a position within the scope of the agreement is definitely removed therefrom whether it occurs because of his demotion, promotion, permanent transfer, discharge or otherwise. See Award 3269.

Carrier further contends that its actions were taken within the meaning and intent of applicable rules, particularly Rule 2 of the Appendix. With this contention we agree. It should be remembered that the only rules applicable to the positions here involved are found in the appendix.

J. F. Serrett had a system seniority as of July 1, 1929; A. R. Brown as of January 31, 1942; and T. O. Weeks as of March 8, 1913. Under Article 4 (h-1) of the agreement effective August 1, 1945, these men held their seniority while working in official or supervisory capacities. It provides, "A train dispatcher who has heretofore accepted and who is carried on the current seniority roster of employees, or train dispatcher who may hereafter accept an official or supervisory position . . . will, while so employed, retain and accumulate seniority rights as a train dispatcher." There is nothing in the rules of the appendix, particularly Rule 2, that limits the Carrier in its selection to any Division of its system or that the employees be then working in that position; as long as they were properly qualified, had seniority and were subject to the agreement, these men were eligible to the positions to which appointed. The Carrier appointed them within the intent and meaning of the applicable rules.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.