

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of R. R. Hillon, Movement Director, Pennsylvania Railroad, Columbus Division, Columbus, Ohio, that:

(1) The seniority regulations of Part II of the Agreement between The Pennsylvania Railroad Company and Train Dispatchers, Movement Directors, Power Directors and Assistant Power Directors, were misinterpreted and misapplied when, on or about March 16, 1946, Jacob Irwin, a Movement Director junior to Movement Director R. R. Hillon, was allowed and permitted to displace the said R. R. Hillon from the first trick Movement Director position at Columbus, Ohio.

(2) Said R. R. Hillon, the senior Movement Director on the seniority territory, is entitled to said first trick Movement Director position and that he shall, forthwith, be permitted to occupy that position in accordance with the seniority regulations of the effective Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between The Pennsylvania Railroad Company, The Long Island Railroad Company and Train Dispatchers, Movement Directors, Power Directors and Assistant Power Directors, (employees of said carriers) represented by the American Train Dispatchers Association. Part II of said Agreement containing Regulations governing rates of pay and working conditions of Movement Directors became effective August 1, 1943. Said Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein. It will, hereafter, be referred to as "the Agreement."

This is the first collective bargaining agreement between the parties. The term "Movement Director" as used in the Agreement includes, among other pay-roll classifications, Powermen, which has since been discontinued and the term "Powerman" is synonymous with the term "Movement Director."

Prior to the effective date of the Agreement (August 1, 1943) the employees who are covered by it had no seniority rights. There was no known and recognized distinction between a temporary and a permanent vacancy. Employees were not awarded positions as Movement Director (then, in some offices, classified as Powermen) in any seniority or service order nor in accordance with the requirement of any rule or regulation. They were assigned to positions (both temporary and permanent) by the unilateral direction of management and they had no choice if they remained in the service of the carrier but to accept and occupy any position which manage-

Exhibits not reproduced.

OPINION OF BOARD: This case involves only the application of the seniority rules of the Agreement to a factual situation. The meaning of the rules is not in dispute and the application thereof is dependent upon inferences to be drawn from the facts. In March 1946 a hearing was held to develop the facts and subsequently correspondence was exchanged between the Carrier's Superintendent and the Organization's General Chairman, which resulted in agreement upon the inferences to be drawn and the application to be made, as shown by the General Chairman's letter of May 9, 1946. That such representatives are authorized and competent to so agree is not disputed and is confirmed by Rule 7-C-1.

Subsequently the General Chairman wrote to the Superintendent withdrawing his concurrence and later this claim was filed upon the same situation. Can that Agreement be so revoked by one of the parties? In our view it may not except upon a showing of fraud, mistake of fact or subsequent developments altering the situation. Such is not the case here. All of the pertinent facts existed on and prior to March 16, 1946, and are presumed to have been known to the parties when they made such Agreement. In fact the only relief sought by the petitioner is that this Board draw different inferences from the facts than were drawn and agreed to by the General Chairman in May 1946. In other words, the Organization here seeks to repudiate that Agreement and relitigate the same case. Under these circumstances we find the claim precluded by an Agreement of the parties. If the rule were otherwise there would be no finality to agreed settlements of disputes but either party could repudiate its Agreement and relitigate each claim at its own whim or pleasure.

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 Employees involved in this dispute are respectively carrier and employees 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 did not violate the Agreement.

AWARD

The claim is hereby denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.