

Award No. 5377
Docket No. TE-5316

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that the Carrier violated the provisions of the Telegraphers' Agreement when and because on certain days, specifically listed in the Employees' Statement of Facts, between April 12, 1948 and June 18, 1948, both dates inclusive, M. Slocum, regularly assigned towerman at Bridge 60, assigned hours 7:30 A. M. to 3:30 P. M. was:

- (a) Suspended from his regular position at Bridge 60 without pay;
- (b) Required to work as an extra train dispatcher outside of the hours of his regular position and allowed only straight time rate; and,
- (c) Required to work as an extra train dispatcher at straight time rate on the rest days assigned to his regular position at Bridge 60.

In consequence thereof the Carrier shall be required to pay Claimant Slocum a day's pay at Bridge 60 rate each day he was suspended; time and one-half at the dispatcher's rate for each hour he was required to work as a dispatcher outside of his regular hours at Bridge 60. These payments less those previously allowed.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of November 1, 1947, and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

M. Slocum held a regular assignment as first trick towerman at Bridge 60, Scranton, Pa., assigned hours 7:30 A. M. to 3:30 P. M., rest days Monday. He also held seniority as a train dispatcher.

On Sunday, April 25, 1948, he was instructed to vacate said assignment for the purpose of performing dispatcher's work on April 27, 28, 29, 30 (lost account hours of service law), May 1, 2, 3, 4, 5, 6, 11, 12, 13, 14 (lost account hours of service law) 18, 19, 20, 21, 22 (lost account of hours of service law), 25, 31, June 1, 2, 3, 4 (lost account hours of service law), 8, 9, 10, 11 (lost account of hours of service law), 15, 16, 17, 18 (lost account of hours of service law), for which he received no compensa-

The Carrier further contends that M. Slocum was not suspended from his regular position at Bridge 60 without pay for the period April 12, 1948 and June 18, 1948. Mr. Slocum accepted Dispatcher's work on the dates of this claim because at that time he was carried on the Dispatchers' roster and in order to hold his status as a dispatcher was required to perform the service which he did and has done for more than 20 years. It was not until June 20, 1948, Mr. Slocum wrote Superintendent Diegtel " * * * it is my desire to be relieved of all further dispatching assignments * * *." Mr. Slocum did not place himself on the extra list of Telegraphers after completion of dispatcher work but insisted on being placed on a permanent basis on the position he held at Bridge 60 under the Telegraphers' Agreement.

The claim is without merit, is not supported by either rule or practice, and for reasons heretofore stated, it should be denied.

OPINION OF BOARD: Claimant, General Chairman of the Telegraphers' Organization, "owned and occupied" the position of towerman. He also held seniority as a train dispatcher. On various dates he accepted proftime work as an extra train dispatcher and was compensated at straight time rates attaching to that position. He claims time and one-half for days worked as dispatcher and a day's pay for each day allegedly suspended from his regular assignment.

We are concerned specifically in this docket with Article 16(d-1) and (d-2), which, in substantially the same force if not in form now appearing, have been in the Telegraphers' Agreement with this Carrier since 1923 although such Agreement has been several times amended. Long-standing practice, indulged in by this Claimant personally, supports the Carrier's interpretation of the Article involved. However, in the final analysis, the claim here asserted rests upon the meaning to be given the word "promoted" as appearing in the before-mentioned sub-section (d-2), and we give brief consideration to the construction of the Article as containing the controversial word.

The Claimant contends even occupancy of a dispatcher's position to fill a temporary vacancy constitutes promotion to that status within the meaning of the Rule in question, which resultant loss of his regular assignment upon return to his telegrapher's duties. The Carrier, on the contrary, would defer the operational effect of Article 16 until some degree of permanency attaches, or, in its words, "until he owns a job as dispatcher".

Claimant sets forth in his submission, and relies heavily thereon, an excerpt from the transcript of a negotiating conference, reading:

"Mr. Elliott (V-P Organization): He's not promoted until he acquires a date.

Mr. Shoemaker (Gen'l Supt.): He is promoted in his own mind when he is selected for that work in the first place. It's a mark of distinction when a man is chosen for dispatcher work."

Carrier's colloquist was referring clearly to a state of mind, an impression, and not to a binding status. We find nothing determinative of this dispute in the quoted remarks. Mr. Justice Jackson recently warned, under comparable circumstances, that "resort to a legislative history is only justified when the face of the Act is inescapably ambiguous," and we cannot say that such ambiguity exists here.

It appears from the record that this Carrier, in common with the practice of many other railroads, recruited for their dispatcher needs from the Telegraphers' Organization. Nothing in the cited Article appears intended to divest ambitious and deserving telegraphers of this opportunity to better their employment status. This system of promotion to supervisory positions outside of the Telegraphers' Agreement is dealt with exclusively in

Article 16. Article 15, concerning relief work in event of emergencies, would seem intended to apply solely to work of a nature generally covered by the Scope Rule of the Telegraphers' Agreement. The whole tenor of Article 16 denotes permanency as a condition of applications. A procedure for giving notice and the taking of applications for the available position is provided with reservation in Management to make the appointment. This is incompatible with any intended application of Article 16 to temporary assignments of the nature here involved. Because seniority is involved, the status of the employe in event of demotion is also covered in Article 16 as we would expect. It is inconceivable, in view of the long-standing practices shown by the record and the personal application of the rules by Claimant over an extended period, that the parties intended to inflict the severe penalty of loss of regular assignment as a telegrapher because of a day's work as dispatcher. We are not inclined to so hold at least upon the showing made on this record and particularly in the absence of other interested parties. If a dispatcher's position was bulletined, applications received, formal selection and assignment made and thereafter the position was abolished or the employe was demoted, Article 16(d-2) would come into play. But such is not the case before us.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Claimant was not promoted to dispatcher's duties within the intent of Article 16 by acceptance of assignments to fill temporary vacancies in such supervisory positions. The applicable Agreement was not violated by practices shown by this record.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of June, 1951.