

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie—Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
SACRAMENTO NORTHERN RAILWAY

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

(a) The Sacramento Northern Railway ignored and violated the spirit and intent of Rules 7 (a) and 7 (b) of the current train dispatchers' agreement, when, on June 2, 1950, it employed Mr. I. S. Biggs as train dispatcher, then, on or about August 19, 1950, disapproved his application for employment and then subsequently solicited Mr. Biggs to re-enter its service as train dispatcher and instead of reinstating the original application of Mr. Biggs, required him to make new application for service with the Carrier as train dispatcher, returning Mr. Biggs to service as train dispatcher on or about November 28, 1950, and then again, effective February 8, 1951, disapproved his application for permanent, employment, and

(b) The Sacramento Northern Railway shall now reinstate Train Dispatcher Biggs to his original seniority date established June 2, 1950, with seniority unimpaired, and

(c) The Sacramento Northern Railway shall now compensate Train Dispatcher Biggs for all time lost as train dispatcher between August 20, 1950, and November 28, 1950, as a result of its unethical conduct, and

(d) The Sacramento Northern Railway shall now compensate Train Dispatcher Biggs for all time lost as train dispatcher, pursuant to the rules of the current agreement, beginning with February 9, 1951, and ending with the date he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: There exists between the Sacramento Northern Railway and its train dispatchers represented by the American Train Dispatchers Association an agreement effective April 1, 1945, governing compensation, hours of service and working conditions of train dispatchers. A copy of the agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein. The contract rules of that Agreement, pertinent to this dispute, read as follows:

"Rule 7—SENIORITY

(a) A train dispatcher's seniority will date from the time he entered the service last as a train dispatcher and shall extend to

ployment with Carrier on November 27, 1950, or that he was exempt in any way from the provisions of Rules 7(a) and 7(b).

All of the above has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 31, 1950 Claimant Ira S. Biggs filed an application with respondent Carrier for employment as a train dispatcher. He began work on June 2, 1950 subject to the right of the Carrier under Rule 7 (b) of the applicable schedule to approve or reject his application within the specified 90 days.

On or about August 18, 1950, some 77 days after claimant began work for the Carrier, he was notified by letter that his application for employment had been disapproved.

The record shows that the Carrier took the initiative in November 1950 in seeking to have Biggs return to its employ as a train dispatcher. In response thereto Biggs filed a new application for employment on November 27, 1950, and actually began work on December 1, 1950.

Some 73 days thereafter, or on or about Feb. 7, 1951 Claimant was notified once again that his application for employment had been disapproved.

Petitioner asserts the claim that the Carrier was misusing its rights under Rule 7 (b) in such a way as to be destructive of the intent and purpose of the Rule.

Respondent, on the other hand, contends that in each instance action was taken within the permitted 90 days specified in the Rule; that the two applications were clearly distinct and had no relation one to the other.

Carrier does not explain why the Claimant was disapproved for employment on the two occasions. It holds that under the terms of Rule 7(b) it has the inherent right to disapprove an application, hence no giving of reasons is required of the Carrier in the exercise of those rights.

It may be of some relevance to point out that the Claimant was not unknown to the Carrier when he made application for employment. For some five years previous he was employed as a train dispatcher with the Tidewater Southern Railway Company and the Western Pacific Railroad Company. Both the Tidewater Southern and the instant Carrier are subsidiary Carriers of the Western Pacific Railroad Company.

The Petitioner seeks to have this Division direct that Claimant be reinstated to the position in question with a seniority date of June 2, 1950, and that the Division further direct the Carrier to make certain monetary payments to Claimant.

In view of the facts and circumstances peculiar to this particular case we believe Claimant is entitled to reinstatement as a train dispatcher. Carrier has advanced no valid reason for requiring the Claimant to file an entirely new application on November 27, 1950. His qualifications were undoubtedly well known to Carrier's representatives when they sought to have him return to the employ of the Company. He responded to their request in good faith, and began work on December 1, 1950.

With respect to the proper seniority date for Claimant we are governed by the principle set forth in Award 3520 of this Division. Under the principle here endorsed by the Division December 1, 1950 would appear to be the proper seniority date for Claimant under the facts of this case.

This conclusion would rule out the requested monetary payments for the period between August 20, 1950 and November 28, 1950.

With respect to the requested monetary payments from Feb. 9, 1951 forward to the date of reinstatement, we are convinced that the peculiar facts and circumstances of the case justify reinstatement without the payment of such monies. Therefore it will be provided that I. S. Biggs be returned to a train dispatcher position with the respondent Carrier with a seniority date of December 1, 1950.

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 claim should be sustained to the extent set forth in the above Opinion.

AWARD

Claim sustained to the extent set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of March, 1952.