

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE PENNSYLVANIA RAILROAD COMPANY

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

1. The Pennsylvania Railroad Company acted contrary to the intent of the Agreement between the parties to this dispute when, on January 1, 1951, that Carrier abolished all Movement Director positions on the former Toledo Division at Toledo, Ohio, and thereafter permitted individuals who do not hold seniority under, and are not subject to the Agreement, to perform work therefore assigned to and performed by Movement Directors.

2. The Pennsylvania Railroad Company compensate Mr. G. L. Seaman, extra Movement Director, Eastern Division, for loss in earnings as Movement Director, beginning with January 3, 1951, and until the work of Movement Director is restored to those who under the provisions of the Agreement have a contractual right to perform such work.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the Pennsylvania Railroad Company and Train Dispatchers, Movement Directors, Power Directors, Assistant Power Directors and Load Dispatchers, employees of the Pennsylvania Railroad represented by the American Train Dispatchers Association. Part II of said Agreement contains provisions governing Movement Directors, employees of the Pennsylvania Railroad Company, and became effective August 1, 1943. Various regulations of this Agreement have been revised since the original effective date and where such regulations are pertinent to this dispute and are quoted herein, the effective date of the Regulation as presently effective will be shown in parentheses. This 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 be referred to hereafter as the Agreement.

Prior to January 1, 1951, G. L. Seaman, in whose behalf this claim is presented to your Honorable Board, was employed by the Pennsylvania Railroad Company as a Movement Director, a position falling within the scope and regulations of the Agreement. Prior to November 1, 1950, the Movement Director position held by Mr. Seaman was on the carrier's Toledo Division with headquarters at Toledo, Ohio. From November 1, 1950 to December 31, 1950, the position occupied by Mr. Seaman remained at Toledo, Ohio, but was under the jurisdiction of Carrier's Eastern Division with headquarters at Pittsburgh, Pennsylvania, as will be hereafter explained.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: Effective November 1, 1950, the Carrier's Toledo Division was abolished, a part thereof becoming a part of the Carrier's Eastern Division and the remainder becoming a part of the Carrier's Columbus Division. In conformity with Regulation 3-H-1 of the July 1, 1950 Agreement between the Carrier and its Movement Directors, a special agreement was reached between the parties on November 8, 1950, to adjust the seniority of the four Toledo Division Movement Directors, with the result that all four Movement Directors transferred their Toledo Division seniority date to the Eastern Division seniority roster. The Toledo Movement Director positions were continued in effect until January 1, 1951, when they were abolished.

The Employees now complain that much of the work previously performed by Movement Directors at Toledo has since abolishment of their positions been performed by employees such as Train Masters, Special Duty Conductors, and the like, not holding seniority rights as Movement Directors. The Employees insist that "so long as there remains any work of the class covered by the scope of the Agreement to be performed at Toledo, employees holding seniority rights under the scope and rules of the Agreement, have a contractual right to perform it."

In support of its position that the work performed by Movement Directors does not belong exclusively to employees classified as Movement Directors, the Carrier relies upon the definition of Movement Director and Assistant Movement Director contained in the July 1, 1950, Agreement.

"Movement Director

"Assistant Movement Director

"These classes shall include positions in which the **preponderance** of the duties of incumbents consist of:

"Supervision of the handling of trains, distribution of motive power, equipment, crews, and performing work incident thereto."
(Emphasis added).

Use of the word "preponderance" in the definition strongly implies that the parties contemplated that some employees other than Movement Directors might properly perform some of the enumerated duties; in other words, that the type of duties performed by Movement Directors should not belong exclusively to the Movement Director classification. Even the Employees seem to recognize that such work does not belong exclusively to Movement Directors under the rules, for they say they do not contend that Movement Directors have the same exclusive right at outlying terminals that the Employees claim for them where a Movement Director position has been maintained and abolished. This seems to imply recognition, though indirectly, that under the rules persons holding Movement Director seniority do not have exclusive right to the type of work involved in their classification. The above considered, the Board finds no merit in the Employees' contention that if any work of the type previously performed by Movement Directors at Toledo remains, that work can only be performed by employees holding Movement Director seniority.

But the Employees also seem to be highly concerned with the possibility that by dispersing and spreading work formerly performed by Movement Directors to many employees, so that such work would not constitute a preponderance of the work of any of the employees, the Carrier might seek to

eliminate all Movement Director positions. In this regard, if a **substantial** amount of such work is spread to other employes after a Movement Director position has been abolished, and this fact is satisfactorily established, then the Employes have good cause to complain, for the Carrier cannot properly do indirectly what it cannot properly do directly.

The next question, then, is whether a substantial amount of work previously performed by Movement Directors at Toledo has been performed by employes not holding Movement Director seniority since the merger. The Carrier asserts "that even if any of these persons performed some item of the work consisting of supervision of handling trains, distribution of power, equipment, crews and work incidental thereto that was handled by the Movement Directors when they were located at Toledo, Ohio, such work is and could not be the preponderance of the duties of such persons, and **is not sufficient in amount to constitute the preponderance of the duties of an Assistant Movement Director**, were on assigned to Toledo." (Emphasis added). Has enough work previously performed by Movement Directors at Toledo been performed by other classifications of employes to constitute a preponderance of the duties of one Movement Director? If so, the burden is on the Employes to establish that fact.

The Carrier contends that the primary need for Movement Directors is in connection with general supervision and coordination of work on the Division level; that they are needed primarily at Division Headquarters. In this connection, it is clear from the record that the entire Toledo Headquarters was eliminated by the merger. And the Carrier contends that "all Movement Director work formerly handled at Toledo is handled either at Pittsburgh or at Columbus."

While the Employes admit that "The Movement Director work on the Sandusky Branch was taken over by Movement Directors at Columbus," they claim that the Movement Director work of that part of the Toledo Division absorbed by the Eastern Division has been performed by employes other than Movement Directors since the Toledo positions were abolished. In support of their contention that much work previously performed by Movement Directors later was performed by other employes, the Employes have submitted and rely primarily upon a long list of work items (Employes' Exhibit TD-2). But the Employes have failed to analyze the items in their list, and have failed to indicate just who supervised the work. Such analysis and information, however, has been supplied by the Carrier (Carrier Exhibit C). The Carrier has satisfactorily shown that of the 117 items listed by the Employes, approximately 107 were actually handled by Movement Directors. Indeed, the Employes themselves have admitted at other places in the record that numerous of the items included in their list were handled by Movement Directors. The Employes have simply failed to satisfactorily establish that a substantial amount of work previously performed by Movement Directors at Toledo has been performed by other employes since the Movement Director positions were abolished.

In view of the above considerations it must be concluded that the Employes have not established any violation of the Agreement by the Carrier.

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 was not violated.

AWARD

Claim (1) and Claim (2) both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.