

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(a) E. D. Mayer, who prior to April 15, 1954 was employed as a train dispatcher and holding seniority rights as such with a seniority date of October 8, 1948 on the seniority roster of District No. 1 of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as "the Carrier", forfeited such seniority date under the provisions of Rule 4 (f) of the Agreement between the parties to this dispute, effective September 16, 1950, when, while holding a regularly assigned position as train dispatcher, he asserted seniority in other service by applying for and becoming assigned to a position in other service, effective April 15, 1954.

(b) The Carrier shall remove the name of E. D. Mayer with a date of October 8, 1948 from the seniority roster of District No. 1 in accordance with the provisions of Rule 4 (f) of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: In the existing Agreement between the Carrier and the American Train Dispatchers Association, hereinafter sometimes referred to as "the Organization", effective September 16, 1950, a copy of which is on file with your Honorable Board and by this reference is made a part of this submission the same as though incorporated herein, the following rule is pertinent to the instant dispute:

"RULE 4 (f)—FAILURE TO BID AND FORFEITURE

Failure of train dispatchers to make application for bulletined positions will not cause forfeiture of seniority except as follows:

1. Failure of an assigned First Extra Dispatcher to make application for and accept a permanent vacancy or permanent new position in the office where so assigned will cause forfeiture of seniority rights.

2. Failure of an extra train dispatcher to make application for and accept a permanent vacancy or permanent

dispatcher position awarded them by bulletin by performing compensated service on such position. Thereafter they can only relinquish such position as contemplated by Schedule Rule 4(f). Under Rule 5(g) a train dispatcher awarded a bulletined position can only decline to accept such position before he has performed compensated service on that position, thereafter he would relinquish such position. The word "accept" means to take or receive what is offered; the word "relinquish" means to withdraw from, to leave, to quit, to forsake or abandon. At Sioux City Dispatcher Mayer accepted or took the train dispatcher position that was offered to him. He did not accept or take the train dispatcher position at LaCrosse that was offered to him, therefore, he could not possibly relinquish that position as contemplated by Schedule Rule 4(f); instead he declined to accept the train dispatcher position at LaCrosse on April 19, 1954, thereby assuming the status of an extra train dispatcher. Had Dispatcher Mayer performed service on either the position at Emery or the position at Worthing during the period he was considered as a regularly assigned train dispatcher, then and only then could he be considered as having voluntarily relinquished his position as train dispatcher and asserted seniority in other service.

Briefly, it is the position of the carrier that inasmuch as Dispatcher Mayer had not accepted the assignment by performing service as train dispatcher at LaCrosse, he could not relinquish it. Therefore, the last paragraph of Rule 4(f) would not be applicable and Dispatcher Mayer would not have forfeited his seniority as a train dispatcher.

(Exhibits not reproduced.)

OPINION OF BOARD: This matter comes before us as a joint submission of the parties. The Organization claims that E. D. Mayer, while regularly assigned as Train Dispatcher, forfeited his seniority as a Dispatcher by reason of exercising seniority rights in other service. Rule 4(f) of the Agreement provides, among other things, that,

"* * * A train dispatcher who voluntarily relinquishes his position as train dispatcher and asserts seniority in other service shall forfeit his seniority as train dispatcher."

E. D. Mayer, whose seniority date was October 8, 1948, was awarded a regular Train Dispatcher's assignment in Carrier's Sioux City office, March 15, 1954 and began service there March 23, 1954. On March 31, 1954, a permanent vacancy on 2nd trick relief Train Dispatcher position at LaCrosse, Wisconsin, in the same seniority district, was bulletined and Mayer, the senior applicant, was assigned by bulletin dated April 15, 1954.

On April 1, 1954, a temporary position of Agent at Emery, S. D., under the Telegraphers' Agreement, was bulletined and Mayer was assigned to this position by bulletin dated April 15, 1954.

The record shows that Mayer was advised by the officers of the Train Dispatchers' Organization that if he accepted the position of Agent at Emery he would forfeit his seniority under this Agreement. His attention was called to the last paragraph of Rule 4 (f), quoted above.

The Carrier contends that Mayer is protected by Rule 5(g), which provides that,

"A train dispatcher applying for and being assigned to a position bulletined pursuant to Rule 5(f) must accept it. If he declines to do so, he shall thereupon assume the status of an extra train dispatcher. . . . When a train dispatcher is assigned to a permanent position, his former position becomes vacant and he will not be entitled to apply for that vacancy." (Emphasis added.)

Since Mayer qualified for two positions at the same time he had a choice of accepting either the 2nd trick Train Dispatcher position at LaCrosse,

Wisconsin and thus retaining his seniority under this agreement, or asserting his right to the Agent's position at Emery, S. D., under the Telegraphers' Agreement, and thereby forfeiting his seniority under the Train Dispatchers' Agreement. Rule 5 governs the filling of vacancies. It does not determine who gains or loses seniority, as does Rule 4. And the last paragraph of Rule 4 (f), which deals specifically with "Failure to Bid and Forfeiture," makes plain that a "train dispatcher who voluntarily relinquishes his position as train dispatcher and asserts seniority in other service shall forfeit his seniority as train dispatcher." (Emphasis added.)

We must agree with the Organization that this language of 4 (f) is controlling in Mayer's case. If not, it has no meaning. Mayer was not required or forced to give up any position under this Agreement. He voluntarily surrendered his claim to both his former position at Sioux City and the one awarded him at LaCrosse. He did this with the purpose and intent of asserting seniority in other service. Regardless of the specific dates involved, there is no question about Mayer's intentions. Therefore, we have no choice but to sustain the Organization's claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Train Dispatcher E. D. Mayer forfeited his seniority as Train Dispatcher under the provisions of Rule 4 (f) of the parties' Agreement made effective September 16, 1950.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March, 1957.