Award No. 9259
Docket No. TD-9123

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY — Gulf District

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

(a) The International-Great Northern Railroad Company (Missouri Pacific Lines), hereinafter referred to as the "Carrier" failed and refused to comply with the wording and intent of the currently effective agreement between the parties, particularly Section (1) of Article IV, and Section (a) of Article V, when on or about May 27, 1956, it arbitrarily assigned Train Dispatcher J. S. Ford to a regular relief dispatcher position consisting of three days' relief work at Palestine, Texas, and two days' relief work per week at San Antonio, Texas, a position for which Claimant Ford did not bid.

(b) The Carrier shall rescind its action and restore Claimant J. S. Ford to his status as an extra train dispatcher, effective as of the date he was improperly assigned as specified in paragraph (a) of this claim.

EMPLOYES' STATEMENT OF FACTS: The applicable Schedule Agreement between the International-Great Northern Railroad Company and its Train Dispatchers, represented by the American Train Dispatchers Association, effective May 1, 1948, and subsequent revisions thereof, are on file with your Honorable Board and by this reference are made a part of this submission as though fully incorporated herein.

Pertinent provisions of the Agreement read as follows:

"ARTICLE I

"(a) Scope.

"This Agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatchers', as hereinafter used, shall include Night Chief, Assistant Chief, trick, relief and extra train dispatchers. It is agreed that one Chief Dispatcher (now titled Division Trainmaster on this property) in each

OPINION OF BOARD: The claim is that Carrier violated the Agreement, particularly Articles IV (i) and V (a) thereof, by arbitrarily assigning Claimant, an extra train dispatcher at the time, to a regularly established five-day train dispatcher position for which he had not applied.

Claimant had formerly held, as his regular assignment, the position in question but had voluntarily relinquished it on May 15, 1956, and then assumed the status of extra train dispatcher. In relinquishing the position, Claimant appears to have been well within his rights and we can not accept Carrier's contention to the contrary. Claimant did not assert seniority in another service and, in line with Article IV (f) of the applicable Agreement, continued to protect his seniority as a train dispatcher.

On May 16, 1956, Carrier bulletined the relief position relinquished by Claimant, but at the closing date of the bulletin, there were no applicants for the position. Confronted with that situation, Carrier first assigned a junior extra train dispatcher to the position but withdrew that appointment when protested and instead adopted the course of action that is the basis of the instant claim and assigned Claimant to the position.

Obviously, the assignment of an employe to a position for which he has not applied is less than a happy solution to the personnel problem that beset the Carrier. As a matter of fact, at first blush, that fact alone would seem to provide persuasive support for the present claim, particularly in the light of the philosophy and purpose underlying the bulletin procedure. Nevertheless, it is apparent from a more comprehensive analysis of the case that the controlling Agreement does not expressly or by reasonable implication cover this situation where there are no applicants for a duly bulletined position. It follows therefore that the Carrier is unrestricted by any rule of the Agreement in making the assignment in question as a solution to its problem. See Awards 7918, 7296 and 6552. It fully complied with its contract commitments regarding bulletin procedures and careful analysis detects no requirement in Articles III (e) and (f), IV (g) and (i), V (a) or any other provision of the Agreement that would prevent the assignment that is the subject of this claim. A contrary conclusion could be attained only by our inserting additional language in Article V (a), a practice that is proscribed by numerous prior awards and which we are not disposed to adopt.

In view of the hiatus in the Agreement that properly can be corrected only by negotiation and since no rule violation has been established, the claim will be denied. Cf. First Division Award 15453. All we are holding is that the very specific claim before us is not supported by the rules or record in this case. We are not passing upon the wisdom or desirablility of the solution Carrier has decided upon for the problem created by the gap that exists in the commitments contained in the Agreement. It may be that the problem will continue to exist and that our ruling can not realistically be expected to provide the cure. It is hoped by this Referee that until the question has been disposed of by negotiations, the Carrier will meet the situation by either immediately rebulletining the position or by other carefully considered action that is consistent with sound personnel and labor relations policies.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.

LABOR MEMBER'S DISSENT TO AWARD 9259, DOCKET TD-9123

The Award of the majority herein is so palpably in error and inconsistent in its own terms that to permit it to issue from this Division without one of the rare dissents which Labor Members of this Division register, would be tantamount to gross nonfeasance.

The Award is correct in holding that a Train Dispatcher may relinquish his assignment and assume the status of an Extra Train Dispatcher. The record discloses that the Carrier recognized this obvious fact despite a belated contention to the contrary. After recognizing this right the majority proceeds to say — albeit with equivocation and obvious mental reservations — that the Carrier in this case, and in this case only, had a right to assign the identical position to the employe who had just relinquished it, even though the Agreement expressly provides that he was not required to make written application therefor, and even though the Agreement further provides that vacant positions shall be assigned to the senior applicant who applies for the position in writing. Hence, the incredibly stupid holding in this case — and in this case only — is that irrespective of Article V, the individual Claimant could be assigned to the vacancy and thereupon immediately relinquish it again, and that process could continue ad infinitum! Surely, the majority must be aware of the many Awards of this Division that we must construe Agreements sensibly rather than absurdly.

The Agreement rules are clear and unambiguous. They adequately protected the Carrier's needs. All of this is clearly pointed out in the record. It was additionally pointed out in the panel argument and reargument. Yet, despite this the majority seeks refuge in incomprehensible and blundering equivocation which is clearly indicative of an unconscionable disposition to shun a sensible and forthright approach to specific questions. Other than for denying the specific claim involved — that and nothing more — the Award settles nothing, and is completely devoid of any precedent value.

Gerald Orndorff
Labor Member

REPLY OF CARRIER MEMBERS TO LABOR MEMBERS' DISSENT TO AWARD NO. 9259, DOCKET NO. TD-9123

The word "rare" in the first paragraph of Labor Member's so-called dissent should, as a matter of accuracy, be corrected to read "frequent".

This dissent ignores the sole principles upon which Award 9259 is based, namely, that no rule of the Agreement prohibits Carrier's action, and that the Carrier is free to do that which it is unrestricted from doing. Awards upholding these principles — starting with Award 2132 — are legion, and include the three cited Awards. Award 9259 does nothing more nor less than reaffirm those principles and ample authority exists for so doing. It augments, as precedent value, the legion of similar Awards upholding the sound principles involved.

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. F. Mullen

REFEREE'S COMMENT TO DISSENT TO AWARD 9259, DOCKET TD-9123

Dissenting opinions are welcomed by this Referee since they can be of value in the development and crystallization of useful principles. However, the Dissent to Award 9259 serves no such helpful purpose and — we are constrained to add — betrays a lack of balance and perspective when it substitutes invective and loose language for the persuasive reasoning that would be of value to us all. Other than to point out that the Dissent seeks to hold this Board responsible for a collective bargaining agreement's failure to cover the matter in question, there is no occasion to make any comment at this time as to the merits of the case, since the Dissent has not presented any significant point in that regard.

Harold M. Weston
Referee