

Award No. 10542

Docket No. TD-11259

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" violated the provisions of the agreement entered into on the sixth day of March 1956 by and between the Pennsylvania Railroad Company and employees of said Company represented by the American Train Dispatchers Association, when it refused and continues to refuse to compensate Movement Director F. D. Dreier for the difference between Assistant Movement Director rate and Movement Director rate from January 16, 1957 to February 27, 1957, as provided for in paragraph 6 (a) of said agreement.

(b) The Carrier shall now pay Movement Director F. D. Dreier the sum representing the difference between Assistant Movement Director rate, which he was paid, and Movement Director rate, which he would have been paid if he had been compensated in accordance with the provisions of paragraph 6 (a) of the March 6, 1956 agreement.

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 Company represented by the American Train Dispatchers Association. Part II of said agreement contains provisions governing Movement Directors and became effective August 1, 1943, except as otherwise designated. A copy of 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. There are also two other Agreements between the parties, one dated October 27, 1955, and one dated March 6, 1956, that are pertinent to this case and copies of these agreements are attached hereto as Employees' Exhibits TD-1 and TD-2.

For ready reference and convenience of the Board, the Regulations of the Schedule Agreement most pertinent to this dispute are found in Part II of the Agreement and quoted as follows:

of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

This claim is not valid for the following reasons:

1. Claimant Dreier was not displaced by H. M. White on January 7, 1957 and assertions to that effect in the record are in error;
2. Assuming that such displacement did occur when rest days were changed in certain assignments, the Agreement of March 6, 1956 was not intended to make employes whole as a result of the normal operation of the seniority rules;
3. Assuming that Claimant was displaced and also assuming that the March 6, 1956 Agreement could be interpreted to afford protection by reason of the normal operation of the seniority rules, the ten-month period, according to the Organization's own statement in their position commenced on March 6, 1956 and would expire on January 6, 1957, before Claimant was allegedly displaced.

It is, therefore, respectfully submitted that the claim here before your Honorable Board is not supported by the facts or by the terms of the various Agreements with employes represented by the American Train Dispatchers Association and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim resulted from the Carrier consolidating its operating territory from 19 Divisions to 9 operating Regions. The respective parties herein agreed to consolidation, the pertinent part of the Agreement of October 27, 1955 is as follows:

"3 (b) Train Dispatchers and Movement Directors holding seniority in the seniority districts listed in column (1) below will be afforded an option, on a basis to be further agreed upon, of selecting one of the Regions indicated in column (2) as the Region in which they desire to establish their seniority; after such selections are made, upon the basis agreed upon, they will accrue seniority with seniority dates as existed in their original seniority district.

"Column (1)	Column (2)
Middle	Pittsburgh or Northern
Conemaugh	Pittsburgh or Northern
Eastern	Pittsburgh or Lake
Panhandle	Pittsburgh or Buckeye
Lake	Lake or Buckeye
Columbus	Buckeye, Lake or Northwestern

"(c) So long as positions of Train Dispatchers or Movement Directors, as the case may be, are continued in existence at the points where located just prior to November 1, 1955, their seniority will be considered as confined to their original seniority district and they shall not be permitted to exercise seniority to positions in the extended portions of their respective regions."

Because of certain situations that arose in the execution of the aforesaid Agreement, a Supplemental Agreement dated March 6, 1950 was executed and it reads as follows:

"IT IS AGREED:

"1. Train Dispatchers will be afforded an option of selecting the Region in which they desire to establish their seniority on the basis of the following:

"(a) Train Dispatchers with seniority, as such, on the former Eastern Division seniority district may select either the Lake Region seniority district or the Pittsburgh Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Eastern Division seniority district roster. The senior five (5) of these Train Dispatchers selecting the Pittsburgh Region seniority district will have their seniority date transferred to that seniority district. The remaining number of such Train Dispatchers, not to exceed seventeen, will have their seniority date transferred to the Lake Region seniority district.

"(b) Train Dispatchers with seniority, as such, on the former Columbus Division seniority district may select either the Lake Region seniority district or the Buckeye Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Columbus seniority district roster. The senior two (2) of these Train Dispatchers selecting the Lake Region seniority district will have their seniority date transferred to that seniority district. The remaining number of such Train Dispatchers will have their seniority date transferred to the Buckeye Region seniority district.

"(c) Train Dispatchers with seniority, as such, on the former Lake Division seniority district may select either the Buckeye Region seniority district or the Lake Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Lake Division sen-

iority district roster. The senior one (1) of these Train Dispatchers selecting the Buckeye Region seniority district will have his seniority date transferred to that seniority district. The remaining number of such Train Dispatchers will have their seniority date transferred to the Lake Region seniority district.

"(d) Train Dispatchers with seniority, as such, on the former Conemaugh Division seniority district may select either the Northern Region seniority district or the Pittsburgh Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Conemaugh Division seniority district roster. The senior six (6) of these Train Dispatchers selecting the Pittsburgh Region seniority district will have their seniority date transferred to that seniority district. The remaining number of such Train Dispatchers will have their seniority date transferred to the Northern Region seniority district.

"1. Movement Directors will be afforded an option of selecting the Region in which they desire to establish their seniority on the basis of the following:

"(a) Movement Directors with seniority, as such, on the former Eastern Division seniority district may select either the Lake Region seniority district or the Pittsburgh Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Eastern Division seniority district roster. The senior one (1) of these Movement Directors selecting the Lake Region seniority district will have his seniority date transferred to that seniority district. The remaining number of such Movement Directors will have their seniority date transferred to the Pittsburgh Region seniority district.

"(b) Movement Directors with seniority, as such, on the former Panhandle Division seniority district may select either the Buckeye Region seniority district or the Pittsburgh Region seniority district as the one to which they desire to transfer their seniority date as shown on the 1955 Panhandle Division seniority district roster. The senior one (1) regularly assigned Movement Director and the senior two (2) extra Movement Directors selecting the Buckeye Region seniority district will have their seniority date transferred to that seniority district. The remaining number of such Movement Directors will have their seniority date transferred to the Pittsburgh Region seniority district.

"3. Details with respect to the manner in which the options provided for herein may be filed and exercised, together with the procedure to be followed in advertising and filling positions which will be transferred from certain of the former Divisions referred to herein to the Regions specified in this Agreement, will be agreed upon by the appropriate representatives of the American Train Dispatchers Association with the Superintendents of Personnel of the Regions affected.

"4. (a) A Train Dispatcher or Movement Director with seniority under Part 1 and Part 2 of the Schedule Agreement will have his seniority date under both Parts transferred to the same Region, but seniority may be exercised on the Region to which transferred only to obtain a position advertised in accordance with the Agreement provided for in paragraph 3 hereof of the classification in which such transferred employe was working immediately prior to the transfer of seniority. The future exercise of seniority in the other classification will be in accordance with the appropriate provisions of the applicable Schedule Agreement.

"(b) A Train Dispatcher or Movement Director whose seniority is transferred under the provisions of paragraph 1 or paragraph 2 hereof relinquished his former Division seniority.

"5. Train Dispatchers or Movement Directors transferring from one location to another as the result of exercising option under this Agreement, will have their household effects transferred from the present location to the new location without cost to them. The Organization and Management will agree on those so transferred. Such employes will also be allowed reasonable living expenses for a period not exceeding thirty (30) days, with a maximum of Two Hundred Dollars (\$200.00) to give them an opportunity to locate themselves. Such allowance will be discontinued when their household effects are delivered to their new home, but, in any event, upon the expiration of the thirty days.

"6. (a) No regularly assigned (including regular relief) Train Dispatcher or Movement Director covered by this Agreement shall suffer any loss in present monthly rate of pay or monthly earnings for a period of ten (10) months from the effective date of the transfer of the office as the result of the application of the provisions of this Agreement, except that no allowance will be made to an employe who fails to accept a position for which he is qualified. In calculating the amount due, if any, under this paragraph any compensation earned in the service of this Company or in other employment will be taken into consideration and the amount due under this paragraph will be reduced accordingly. It is the purpose of this provision that any such employes affected by the application of this Agreement, shall be made whole for the period specified herein.

"(b) An extra Train Dispatcher covered by this agreement, having seniority as Train Dispatcher on January 1, 1956, will be afforded the opportunity of working as many days as Train Dispatcher in 1956 that he worked as Train Dispatcher in 1955."

The facts upon which this claim is based are as follows:

The Pittsburgh Region was comprised of five former Divisions, one of which was the former Conemaugh Division on which Claimant held seniority since July 1, 1952.

The Claimant at the time dispute arose was working as a temporary Movement Director and he held this position until January 6, 1957. In the instant case Claimant had seniority No. 40 on the Pittsburgh Region, the dovetailing of seniority and the exercise thereof became effective in March and April 1956. A certain Mr. White held seniority Roster No. 37 on the Pittsburgh roster. The Carrier in December, 1956, changed the rest days of certain Movement Directors positions on the new Pittsburgh Region.

Pursuant to this change in rest days, Mr. White based upon his seniority, selected permanent position Movement Director No. 3 and temporary position Movement Director No. 7. This double displacement is permitted by the rules.

At the time, Claimant held position No. 7 which White sought to displace. The Claimant then bid for the position vacated by Mr. White, position No. 4, and it was awarded to him on January 6, 1957, the day prior to being officially displaced by Mr. White from position No. 7.

The Claimant avers that he should be restored whole because of the afore-mentioned changes as provided in paragraph 6 (a) of the March 6 Agreement.

In order to determine the issues presented by the Claimant we must consider the March 6, 1956 Agreement in its entirety.

A careful examination of the March 6, 1956 Agreement does not support the Claimants position. The terms of this Agreement concerns itself with the selection of seniority districts, the transferring of offices or positions to different seniority district, and other parts of the Agreement relates to the expenses incurred in the moving or transferring of positions and the compensation that would be paid if such occurred. Neither event occurred.

Further, if we were to assume that the Claimant was displaced, such displacement was not the result of any condition expressed in the March 6, 1956 Agreement, but was the result of the change in rest days, and the Claimant voluntarily bidding for the position that he sought. The senior Employee exercised his seniority rights under Rule 3-F-2, Item 7 of the Master Agreement.

In conclusion, from the foregoing, we must state that the March 6, 1956 Agreement must be read in its entire context, and the provisions relied upon by the Claimant did not contemplate the factual situation existing here. We cannot read into the March 6, 1956 Agreement something that is not there.

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

That the parties waived oral hearing;

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 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 25th day of April 1962.