Award No. 11068
Docket No. TD-12722

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, 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 Pennslyvania Railroad Company, hereinafter referred to as "the Carrier" violated the Schedule Agreement between the parties effective June 1, 1960, specifically Regulation 3-G-1 of Part I, when during a period beginning August 1, 1960, and ending August 31, 1960, no advance notice was given to the General Chairman by the Carrier concerning the merging of the Zanesville Dispatching District and Dispatching District E in the Cincinnati office as contemplated by the aforementioned Regulation.

(b) Carrier shall now compensate Train Dispatchers B. D. Lacy, D. A. Clark and D. L. Gregory in an amount equal to the difference between the amount actually paid to them by the Carrier and the amount they would have received from Carrier between August 1, 1960, and August 31, 1960, had the Agreement not been violated.

(c) Carrier and Organization shall conduct a joint check of the records to ascertain the amount of compensation due the claimants upon final disposition of this claim.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, effective June 1, 1960, governing compensation, hours of service and working conditions, was in effect at the time the instant dispute arose. A copy of said Agreement is on file with this Board and by this reference is made a part of this submission as though the same were fully set out herein.

Regulation 3-G-1, Part I, Page 11), of said Agreement is material to this claim and for ready reference is quoted:

"3-G-1. **Seniority and Dispatching Districts—merged or separated.**

"When seniority or dispatching districts or part thereof are merged or separated, not less than thirty (30) days' advance notice

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of its action on August 1, 1960.

Therefore, the Carrier respectfully submits that your Honorable Board deny the claim of the Employes in this matter.

The Carrie demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test 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 Employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are basically not in dispute. The issue is concerned with the interpretation of the Agreement, between the parties, of June 1, 1960 to wit:

> "Regulation 3-G-1, (Part I, Page 11), of said Agreement is material to this claim and for ready reference is quoted:
>
> '3-G-1. **Seniority and Dispatching Districts— merged or separated.**
>
> 'When seniority or dispatching districts or parts thereof are merged or separated, not less than thirty (30) days' advance notice thereof will be given, in writing, by the Manager of Labor Relations to the General Chairman, and the manner in which the seniority of Train Dispatchers affected is to be exercised shall be adjusted by agreement, in writing, between the General Chairman and the Manager of Labor Relations.'"

It is the contention of the Carrier that, provision G-1 of Seniority Regulation 3 provides that any action taken by the carrier which will result in the disturbance of presently defined seniority district— whether to a large or small degree and amounting to the adding or taking away of territory— must be preceeded by thirty (30) days formal notice of the action, followed by an agreement between the parties adjusting seniority of the employes affected.

The Carrier further states that the basic change in 3-G-1 from the previous Agreement was the inclusion of "or dispatching districts" but denies that the basis for change was to require enforcement of Regulation 3-G-1 when seniority districts were not disturbed.

The Employes position is that Regulation 3-G-1 applies when either seniority or dispatching districts, or parts thereof, are merged or separated.

They further contend "there is no dispute between the parties that only one seniority district is involved." "Likewise the record is clear that one dispatching district was merged with another."

The Carrier further raises the question as to the intent of the parties in writing of Regulation 3-G-1 and submits an affidavit by the former General Chairman of the Organization as to his understanding of the intent.

"(COPY)

"AFFIDAVIT

"August 2, 1961

"This is to certify that I, **F. J. Edzwald,** was the duly elected and certified General Chairman, American Train Dispatchers Association, during the period of negotiation involving regulation 3-G-1 of the agreement effective June 1, 1960.

"During my tenure as General Chairman, regulation 3-G-1 was 'tentatively agreed upon' interpreted, completely understood by both parties, and although I was not a signature to the final agreement —the wording of Regulation 3-G-1 was not changed prior to the effective date by the succeeding General Chairman.

"The understanding, as to the intent of the regulation, between myself—representing the organization—and Mr. C. E. Alexander, representing management, was, as follows:

"No change in the existing rule except—

"1. Notice of such change or changes should be from the Manager of Labor Relations to the General Chairman.

"2. The addition of the words 'or dispatching districts' would cover any futuer merger or separation of a dispatching district or a part thereof involving two (2) or more Regions. For example, Region 'A' has three (3) dispatching districts designated Sections 1, 2 and 3—Regions 'B' has three (3) dispatching districts designated A, B and C. It is decided that a portion of dispatching district 1 of Region A should be combined with and made a part of dispatching district A of Region 'B' for operating purposes—this move, in effect, involves two (2) seniority districts and consequently an equitable exercise of seniority should be afforded those employes affected. This expansion of the regulation would then encompass, not only entire seniority districts or parts thereof, but any portion of dispatching districts involving two or more Regions.

The complete intent of this regulation was to cover any merger or separation involving two (2) or more regions not intra region.

"/s/ F. J. Edzwald

"F. J. Edzwald,
Asst. Supervising Operator
Chesapeake Region"

Apropos to this we site Award 6856—Carter in which he states:

"A party is not permitted to go behind his written agreement and offer special knowledge of the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent the written contract shows. * * * The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties."

Upon considering all facets of the present claim we find ourselves returning always to the wording in 3-G-1 of Part I of the Agreement. Whatever the intent of the parties were, the use of the word "or" in the Agreement is the deciding factor, so that when either the seniority or dispatching districts are involved thirty (30) days written notice must be given.

We can only conclude that the Agreement has been violated.

We now turn our attention to part (b) of the claim.

"(b) Carrier shall now compensate Train Dispatchers B. D. Lacy, D. A. Clark and D. L. Gregory in an amount equal to the difference between the amount actually paid to them by the Carrier and the amount they would have received from Carrier between August 1, 1960, and August 31, 1960, had the Agreement not been violated."

We find this to be in accord with 7-B-1 of the Agreement quote:

"Any adjustment growing out of claims covered by this Regulation (7-B-1) shall not exceed in amount the difference between the amount actually paid to the claimant by the Company, and the amount he would have been paid by the Company if he had been properly dealt with under this agreement."

It is therefore the ruling of the Board that (b) part of the claim is sustained.

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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.