

Award No. 11468

Docket No. TD-13251

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 an Agreement between the parties effective September 25, 1958, when it declined to compensate Train Dispatcher E. C. Bond for expenses incurred during the period of September 15, 1960 through October 14, 1960.

(b) The Carrier shall now be required to compensate Claimant Bond for expense incurred September 15, 1960 through October 14, 1960, in the total claimed amount of \$200.00.

EMPLOYES' STATEMENT OF FACTS: The claim here before the Board arises out of a special Agreement between the parties dated September 25, 1958. The provisions of that Agreement which are material to this claim being Paragraphs 1, 2 (a), 2 (b), 6 and 7.

Those provisions are:

1. In accordance with the understanding at our meeting May 21, 1956, pursuant to the transfer to Cincinnati of certain dispatching territory, formerly controlled by Columbus, it was understood that effective May 28, 1956, the limitations on the exercise of Regional Seniority set forth in Paragraph 3 (c) of the Agreement made October 27, 1955, are no longer in effect on the Buckeye Region due to existing factors on the said Region not foreseen on October 27, 1955, and therefore, not commensurate with the intent of Paragraph 3 (c) of the said Agreement; therefore, Regional Seniority is in full force and effect for all employees covered by Parts 1 and 2 of the Schedule Agreement.

2. (a) In the event a position or positions or parts thereof are transferred from one location to another location on the Region, the manner in which the seniority of employees affected is to be exercised will be arranged by mutual agreement between the Office Chairman

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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.

(Exhibits not reproduced.)

OPINION OF BOARD: There was an Agreement under date of 1943 between the parties. It was amended in 1955. Under date of 1958 a special agreement was entered into by the parties. An agreement under date of 1960 was entered into. This Agreement superseded the 1943 Agreements and amendments thereto.

The issue involved herein is whether the 1958 Agreement was superseded by the 1960 Agreement.

The Board finds that the 1958 Agreement was an amendment to the 1943 Schedule Agreement. Section 6 of the 1958 Agreement reads as follows:

"This agreement does not nullify, amend, or modify any provisions of the applicable Schedule Agreement other than contained in the foregoing provisions."

This states in unequivocal terms that it is an amendment. The 1960 Agreement contains a paragraph reading:

"Effective date and changes

"This Agreement supersedes the Agreement effective August 1, 1943, and amendments thereto, and shall be effective as of June 1, 1960, and shall remain in full force and effect until changed or modified in accordance with the Railway Labor Act as amended."

Consequently it must follow that the 1958 Agreement was superseded by the 1960 Agreement.

The claim rests upon the 1958 Agreement and therefore must fail.

For the foregoing reasons, we find the Agreement was not violated.

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 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 6th day of June 1963.