Award No. 11842
Docket No. TD-12876

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Martin I. Rose, 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 M. C. Shuster for expenses incurred during January, 1961.

(b) The Carrier shall now be required to compensate Claimant Shuster for expenses incurred during the month of January, 1961, in the total claimed amount of $200.00.

EMPLOYES' STATE 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on the exercise of Regional Seniority set forth in Paragraph 3(c) of the Agreement made October 27, 1955, are no longer in effect on the Buckeye Region due to existing factors on the said Region not foreseen on October 27, 1955, and therefore, not commensurate with the intent of Paragraph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 employes 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 employes affected is to be exercised will be arranged by mutual agreement between the Office Chairman and the Superintendent-Personnel. The employes transferred to the new location as a result thereof will have their household effects trans-

CONCLUSION

The Carrier has shown that the applicable Rules Agreement does not support the claim and that the Employes have not and cannot produce valid evidence to the contrary.

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

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: Prior to December 22, 1960, Claimant performed extra train dispatcher work at Columbus, Ohio. He held seniority on the train dispatchers roster for the Buckeye Region with a seniority date of July 22, 1952. Prior to May 28, 1956, his seniority was confined to the Columbus office.

Effective December 22, 1960, Claimant was awarded a regular train dispatcher's position at Cincinnati, Ohio, and was paid for qualifying on it from December 22 through December 29, 1960. He assumed the responsibilities of the position on December 30, 1960.

On January 4, 1961, the headquarters location of train dispatchers at Columbus was changed to Cincinnati. By agreement dated January 3, 1961 between the Manager, Labor Relations and the General Chairman, train dispatchers transferring from Columbus to Cincinnati, as a result of this change in location of offices, were allowed reasonable living expenses for a period not to exceed thirty days with a maximum of $300.00.

The claim here is for meals and lodging during the period January 1, 1961 through January 30, 1961 and is based on an agreement dated September 25, 1958 between the Superintendent-Personnel, Buckeye Region, and the General Chairman, which states, in part, that:

> "1. In accordance with the understanding at our meeting on 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 employes 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 employes affected is to be exercised will be arranged by mutual agreement between the Office Chairmen and the Superintendent-Personnel. The employes **transferred** to the new location as a result thereof will have their household effects transferred from the present location to the new location without cost to them. Such employes will also be allowed reasonable living

expenses for a period not exceeding thirty (30) days from the date of the transfer, 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 thirty (30) days unless further agreed to between the Superintendent-Personnel and Office Chairmen.

2.(b) Extra employes covered by this agreement having seniority under Parts 1 or 2 of the Schedule Agreement will be entitled to the 'household effects transfer' and 'expense' provisions of Paragraph 2 (a) above at the time they obtain a regular position if such regular position is located at an office other than the office in which their seniority was confined prior to May 28, 1956."

* * * * *

"5. Headquarters for extra employes will be established by mutual agreement between the Superintendent-Personnel and the Office Chairmen. Relief requirements and extra work referred to in Regulation 5-A-1 (c) Part 1 and 5-A-1 (b) Part 2 of the Schedule Agreement will be performed by extra employes according to seniority on the following basis: . . ."

It is understood that nothing in this agreement is to be construed as nullifying the provisions of Regulation 2-B-1 (c) Part 1 or Regulation 2-B-1 (d) Part 2 of the Schedule Agreement. Furthermore, an extra employe restricted under Provision (a) or (b) above still retains the right to request assignment to vacancies at no additional expense to the Company.

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

7. This agreement shall remain in full force and effect until changed or terminated as provided in the Railway Labor Act as amended."

Carrier contends that this agreement was superseded by the parties' current Rules Agreement which became effective June 1, 1960, and refers to various provisions thereof. In support of this position, Carrier also refers to the agreement dated January 3, 1961 and asserts that its terms cover substantially the same situation referred to in the September 25, 1958 agreement. Carrier also contends that even if it were considered that the September 25, 1958 agreement was still in effect, its provisions do not support the claim in that Claimant obtained his position at Cincinnati by the exercise of seniority and not by transfer.

In response to the contention that the September 25, 1958 agreement did not remain in effect, Petitioner contends that the September 25, 1958 agreement is a special agreement which is controlling over the general agreement, and asserts that paragraph "7" was inserted in the agreement of September 25, 1958 for the reasons that in negotiating the agreement the Employes were aware that:

"1. The Schedule Agreement in effect at that time was in the process of being revised, (Section 6 Notice having previously been

served), and there was a possibility that the eventual revision might not contain the special provisions of this special agreement.

2. It would be necessary to provide in this special agreement a clause guaranteeing the lasting effect of the special agreement despite any subsequent revision of the Schedule Agreement."

The "Notice of Change" provision of the Rules Agreement effective June 1, 1960 reads as follows:

"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."

(Emphasis supplied).

While we respect Petitioner's assertions of the reasons for the inclusion of paragraph "7" in the agreement of September 25, 1958, the Board is bound by, and obligated to give effect to, the language contained within the four corners of the agreements which must be construed in order to resolve this dispute. The language of paragraph "6" of the September 25, 1958 agreement indicates that the contracting parties recognized that provisions of that agreement amended the Schedule Agreement. By the terms of that paragraph, the parties stated, in effect, that amendment of "any provisions of the applicable Schedule Agreement" was to the extent of the provisions "contained" in the September 25, 1958 agreement. This is also illustrated elsewhere in this agreement. Paragraph "1" thereof states, in part, "therefore, Regional Seniority is in full force and effect for all employes covered by Parts 1 and 2 of the Schedule Agreement." Such seniority was not provided for these employes in the Schedule Agreement.

Since the Rules Agreement effective June 1, 1960 was negotiated in accordance with the Railway Labor Act, and its "Notice of Change" terms state that "This Agreement supersedes the Agreement effective August 1, 1943, and Amendments thereto," without qualification or limitation, and we are required to give effect to this provision, we cannot regard the September 25, 1958 agreement, which amended the prior Schedule Agreement, as in effect to support the claim.

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 relied on for the claim 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 15th day of November 1963.