

Award No. 11843

Docket No. TD-12897

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 February 24, 1959, and letter agreement applicable thereto, when it declined and failed to compensate Extra Train Dispatcher J. A. Taylor for expenses incurred in August and September, 1960.

(b) The Carrier shall now be required to compensate the individual claimant for expenses incurred on August 17, 18, 24, 25, 31, September 1, 12, 14 and 15, 1960, in the total claimed amount of \$53.74.

EMPLOYES' STATEMENT OF FACTS: The claim here before the Board arises out of a special agreement between the parties and a contemporaneously executed letter agreement relating thereto.

In the interests of clarity, however, it is necessary to summarize the facts, insofar as they are material here, in respect to certain antecedent special agreements.

But as a preliminary it should be pointed out that the Schedule Agreement between the parties, as distinguished from the special agreements here in reference, bears the effective date June 1, 1960, superseding a Schedule Agreement which had been from time to time revised. The Schedule Agreement of June 1, 1960, was concluded by the parties after protracted negotiations pursuant to an appropriate Section 6 notice served upon the Carrier by the claimant organization in December, 1956. This point is noted here for the reason, as will hereafter appear, the Carrier bases its position herein solely upon the effective date of the June 1, 1960 Schedule Agreement.

On October 27, 1955, incident to widespread changes then being instituted by the Carrier for administrative and operational purposes, the parties concluded a Memorandum of Agreement pursuant to which then existing seniority

by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the instant dispute is not properly before your Honorable Board, that the applicable Rules Agreement does not support the claim and that the Employees have not and cannot produce valid evidence to the contrary.

Therefore, the Carrier respectfully submits your Honorable Board should dismiss or deny the claim of the Employees in this matter.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute poses the question whether the parties "Rules Agreement effective June 1, 1960 superseded earlier agreements made between the Superintendent-Personnel, Northwestern Region, and the General Chairman which are referred to in support of the claim. These agreements provide for or implement in various respects the establishment of Regional Seniority and thereby effectuate amendment of the 1943 Schedule Agreement. Paragraph "7" of the agreement dated March 25, 1959, effective February 24, 1959, states:

"This agreement does not nullify, amend, or modify any provisions of the applicable schedule agreement **other than contained in the foregoing provisions.**" (Emphasis ours.)

Since the Rules Agreement effective June 1, 1960 provides that "This Agreement supersedes the Agreement effective August 1, 1943, and Amendments thereto . . ." we cannot give effect to the prior amendatory agreements relied on for this claim. See Award 11842.

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 Employee 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 Agreements relied on for the claim were 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.