Award No. 18379
Docket No. TD-18758

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, paragraph (2) of Appendix Item No. 1 in particular, when effective Sunday, February 23, 1969, it reduced the number of Night Chief Dispatcher positions beyond that allowed by said agreement.

(b) Because of said violation Carrier shall now compensate the senior available extra train dispatcher one day's pay at the pro rata rate of night chief dispatcher from date of abolishment of said position until said position is re-established. If no extra train dispatcher available on any date involved, then compensate the senior regularly assigned train dispatcher observing rest days on such date at one and one-half times the rate of Night Chief Dispatcher.

(c) Carrier shall now make whole from date first adversely affected compensation wise until date position is restored, any train dispatcher who, as a result of said abolishment, was forced to acquire an assignment producing less compensation because of said abolishment.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board, and by this reference is incorporated into and made a part of this Submission as though fully set forth therein.

For the Board's ready reference, the provisions of Appendix Item No. 1 of said Agreement is quoted in full:

OPINION OF BOARD: This Claim arose as a result of the abolishment by the Carrier of the night chief dispatcher position assigned 9:00 P. M. to 5:00 A. M. effective upon completion of the night chief dispatcher's tour of duty, Sunday, February 23, 1969. The Carrier had determined that the work of the night chief dispatcher had diminished to the point where this position could be abolished and the remaining number of night chief dispatchers could meet the Carrier's remaining service requirements without additional burden being placed upon them. The incumbent of the abolished position, L. L. Chronister, as a result of the abolishment, exercised seniority displacement rights on a trick train dispatcher assignment, although he had sufficient seniority to entitle him to exercise displacement rights on a night chief dispatcher position, which position produces more compensation than that of a trick train dispatcher.

The Petitioner's claim is predicated upon an alleged violation of paragraph (2) of Appendix Item No. 1 to the General Rules Agreement, signed at Springfield, Missouri on the 25th day of September 1965.

Appendix Item No. 1, the rule applicable to the case at bar, reads as follows:

"APPENDIX ITEM No. 1

AGREEMENT
Between
ST. LOUIS-SAN FRANCISCO RAILWAY
Company
And Its Train Dispatchers
Represented by the
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED THAT:

(1) The St. Louis-San Francisco Railway Company is comprised of three (3) Divisions. Notwithstanding the provisions of Article 1(a) of the Schedule Agreement between the parties the Carrier may designate one excepted Chief Dispatcher for each of the three (3) Divisions except the Fort Smith and Arthur Sub-Divisions which were under the jurisdiction of the former Eastern Division Chief Dispatcher may remain under the jurisdiction of the present Eastern Division Chief Dispatcher or be re-assigned to the Southwestern Division Chief Dispatcher.

(2) The jurisdiction of assistant and/or night Chief Dispatcher shall generally, and so far as it is practicable, be those of the respective Chief Dispatchers.

(3) It is agreed that at any time after six (6) months after the effective date of this Agreement the changes herein referred to with respect to the number of excepted Chief Dispatchers and the jurisdictional authority and responsibility of such positions may be the subject of further negotiations upon the written request of either party."

Petitioner asserts that the provisions of Paragraph (2) of Appendix Item No. 1 are absolute and specific in requiring that the jurisdiction of

assistant and or night chief dispatchers be the same as Chief Dispatchers and consequently, Paragraph (2) of Appendix Item No. 1 precludes Carrier from abolishing the night Chief Dispatcher position in question.

Carrier denies that Paragraph (2) of Appendix Item No. 1 is obligatory to the extent contended by the Petitioner. Carrier contends that Paragraph (1) of Appendix Item No. 1 is clearly permissive as to the number of Chief Dispatchers it may designate. There is no hard and fast requirement for three Excepted Chief Dispatchers. Likewise, there is no hard and fast requirement in Paragraph (2) that the jurisdiction of assistant or night Chief Dispatchers shall be exactly that of Chief Dispatcher.

The contentions of the Petitioner and Carrier being averred, it is now incumbent upon this Board to decide the point is issue, to wit: whether the abolishment of the night Chief Dispatcher's position was in violation of Appendix Item No. 1, particularly Paragraph (2) thereof?

In so doing, we must construe the Agreement so as to give effect to the intent of the parties. This Board has held in Award 14242 (Perelson):

> "It is a well established rule and/or principle of contract law that in construing and/or interpreting a contract we look to the whole agreement to ascertain the intention of the parties to it."

In Award 18088 (Quinn), we held,

> "The primary norm in the construction of contracts is that we must ascertain and give effect to the intention of the parties and that intention is to be deduced from the language employed. In construing a written contract, the words employed are given their ordinary meaning."

Applying this universally accepted rule and principle of contract law to the record before us, we can find nothing in the Agreement obligating the Carrier to mantain a specified number of night Chief Dispatcher positions. Nor is it discernible from a thorough examination of Paragraph (2), Appendix Item No. 1, that the jurisdiction of assistant and or night Chief Dispatcher shall be coextensive with the jurisdiction of the respective Excepted Chief Dispatchers. Had it been the intent of the parties that the night Chief Dispatchers must be so assigned that their jurisdiction would correspond with the jurisdiction of the Excepted Chief Dispatchers, the parties could have unambiguously so expressed themselves. This they failed to do.

Paragraph (2) of the Item No. 1 clearly states that the jurisdiction of night Chief Dispatcher shall **generally** and **so far as is practicable** be those of the respective Chief Dispatchers. (Emphasis ours.)

In Award 13828 (Dorsey), we said:

> ". . . The words in a contract, if unambiguous, are given their common meaning unless the words have a peculiar meaning in the industry . . ."

In Award 18088 (Quinn), we held:

> ". . . In construing a written contract, the words employed are given their ordinary meaning . . ."

By employing the word "generally", it is apparent that the parties did not intend that the jurisdiction of night Chief Dispatcher be coextensive with that of the Excepted Chief Dispatchers. If that were their intent, "precisely", not "generally" would have been employed. See Webster's New Collegiate Dictionary; First Division Awards 15592 through 15598 (Tipton). The utilization of "so far as practicable" in Paragraph (2) gives further meaning to the intent of the parties. In Award 13246 (Hamilton), we held:

> ". . . The words 'so far as practicable' leave some degree of discretion within the Carrier . . ."

Thus, the intent of the parties that Carrier be allowed discretion in the matter of jurisdiction is obvious. To hold otherwise, would constitute a revision of the Agreement by interpretation. That is beyond the jurisdiction of this Board. See Award 15380 (Ives).

Paragraph (2) of Appendix Item No. 1 does not preclude the Carrier from establishing additional night Chief Dispatcher positions as needed, nor does the provision prohibit the Carrier from abolishing unneeded night Chief Dispatcher positions, provided none of the work is assigned to or performed by others not covered by the Agreement. The record is abundantly clear that such was not the case nor does the Petitioner contend that any of the work of the abolished position was improperly assigned.

Petitioner further alleges that Carrier's Director of Labor Relations advances a construction of paragraph (2) of Appendix Item No. 1 completely foreign to the understanding reached by the parties during negotiation, to wit, that there would be 17 trick positions, 9 Chief and assistant night Chief positions, 10 relief positions and 2 extra relief days not covered by a regular assignment. However, when positions were established effective October 1, 1965, six days after the Agreement was signed, there was a total of 35 positions established instead of the 36 agreed upon, and the shortage was in the number of night Chief Dispatcher positions.

This Board, whose power is prescribed and limited by the Railway Labor Act, is without authority to give credence to the alleged understanding of the parties and thereby incorporate it into the Agreement.

In Award 13828 (Dorsey), we held:

> ". . . That we cannot add to, subtract from, or supply what cannot be found in an agreement is uncontrovertible . . . Ours is a quasi-judicial function of interpreting and applying agreements in accord with principles of contract law in light of the record before us."

In Award 6856 (Carter), we held:

> "* * * It is presumed that all of the contentions and arguments of the parties are merged in the written agreement. A party is not permitted to go behind his written agreement and offer special knowledge on 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 that the written contract shows. The integrity of written agreements requires that they be so construed. The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and

subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. We cannot subscribe to the view that the meaning of the 40-Hour Week Agreement can anywise be affected by the private knowledge of the party construing it as to its intended meaning. The terms of the written agreement must prevail."

Since it is beyond the scope of our power to go behind the written Agreement in order to discern the intent of the parties, we are compelled to dismiss Petitioner's contention.

Nor can we agree with Petitioner's allegation that Carrier violated Paragraph (3) of Appendix Item No. 1 when it failed to seek negotiations with the Petitioner prior to abolishing the night Chief Dispatcher position. As we stated previously, the Board, in construing contracts must ascertain the intent of the parties and that intention is to be deduced from the language employed. We cannot conjure what the parties intended. We may not add to, subtract from, nor supply what cannot be found in the contract. See Awards 6856 (Carter); 18088 (Quinn); 13828 (Dorsey); 13491 (Dorsey).

The language of Paragraph (3) Appendix Item No. 1 is clear and unambiguous. This reopening clause is specifically limited to the number of excepted Chief Dispatchers and the jurisdictional authority and responsibility of such positions. No mention is made in the provision of night Chief Dispatcher positions, nor is it within the power of the Board to assume that the parties intended that Paragraph (3) would be applicable to night Chief Dispatcher positions. If such was the intent it could easily have been incorporated into the Agreement. It was not. Therefore, we are compelled to deny 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 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 29th day of January 1971.

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