

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23170
Docket Number TD-23274

Paul C. Carter, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the American Train Dispatchers Association that Mr. M. F. Essert (hereinafter referred to as "the Claimant") should be reinstated as a train dispatcher for the Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") and that the Carrier's adamant refusal to reinstate the Claimant as a train dispatcher is arbitrary, capricious, unreasonable and an abuse of managerial discretion. The reinstatement of the Claimant without compensation is sought as the result of an agreement or understanding whereby the Claimant was finally returned to service as a clerk with the right to appeal his disqualification as a train dispatcher not seeking any compensatory features."

OPINION OF BOARD: The claimant herein was formerly employed as a train dispatcher on Carrier's Iowa Division. Following a formal investigation conducted on February 2, 1979, on the charge:

"Your responsibility for not properly performing your duties and following proper train dispatching procedures involving Extra 4419 East and Extra 6855 West on the Boone Subdivision during your tour of duty on January 27, 1979, while you were employed as Dispatcher on Job 023 on that date."

Claimant was dismissed from service on February 6, 1979. During handling of the dispute on the property, the parties agreed that claimant would be restored to his former seniority as a clerk on November 6, 1979, with the understanding that claimant or his representatives reserved the right to appeal the issue of claimant's disqualification as a train dispatcher without compensation.

The Organization filed its notice of intention to submit the disqualification issue to this Board on January 9, 1980, and filed its submission on February 7, 1980. The Carrier's submission was received on March 17, 1980. In its rebuttal submission, the Organization called attention that the Carrier's submission was not signed as required by that part of Circular No. 1 of the National Railroad Adjustment Board, issued October 10, 1934, which provides:

X-1

X-1
"SIGNATURES: All submissions must be signed by the parties submitting the same."

The Organization insists that the Carrier's submission not be considered by the Board as it does not meet the requirements of Circular No. 1. The Organization representative has also called attention of the Referee to the many awards issued by the Board dismissing claims of employees where it was shown that the provisions of Circular No. 1 were not complied with, and insists that the Board cannot establish a double standard concerning the application of Circular No. 1.

The submission of the Carrier bears no signature. Black's Law Dictionary defines signature:

"SIGNATURE: The act of putting down a man's name at the end of an instrument to attest its validity, the name thus written. A 'signature' may be written by hand, printed, stamped, type-written, engraved, photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made. Smith v. Greenville County, 188 S.C. 349, 199 S.E. 416, 419. Maricopa County v. Osborn, 60 Ariz. 290, 136 P.2d 270, 274. And whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient. Griffith v. Bonawitz, 73 Neb. 622, 103 N.W. 327, 339. See Sign."

X-2
The Carrier's submission fails to meet the signature requirement.

X-3
This Board is always reluctant to decide disputes on technicalities. However, (the provisions of Circular No. 1 are mandatory and the Board cannot establish a double standard concerning its application. Based upon the record as it exists, the claim will be 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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not comply with the requirements of Circular No. 1.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.