

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23327
Docket Number TD-23059

George S. Roukis, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Norfolk and Western Railway Company (VGN)

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

(a) The Norfolk and Western Railway Company (hereinafter referred to as 'the Carrier'), violated the controlling Virginian Railway Train Dispatchers' agreement, Articles 1(a), 1(b) 1, 3(f), 4(h) and paragraph 3 of Supplement 6 to said agreement, when it required and/or permitted a person not covered by the agreement to perform service on a position subject to the agreement on January 27, 1978.

(b) Because of said violation, the Carrier shall now compensate the senior qualified extra train dispatcher available one (1) days' compensation for each shift filled thereafter until the position is properly bulletined, awarded and filled under the provisions of the agreement.

(c) In the event any such claim date referred to above occurs as a sixth and/or seventh consecutive day of train dispatchers service for the involved claimant, the claimed compensation shall be increased by one-half pursuant to Article 3(a) (ii) of the agreement.

(d) The identity of the respective individual claimants shall be determined by a joint check of the Carrier's records."

OPINION OF BOARD: The Organization contends that Carrier violated the Virginian Railway Train Dispatchers Agreement, specifically, Articles 1(a), 1(b)1, 3(f), 4(h) and paragraph 3 of Supplement 6 to said Agreement when it assigned a person not covered by the Agreement to perform relief service on the Assistant and/or night Chief Train Dispatcher position at Bluefield, West Virginia on January 27, 1978.

Carrier contends that the assignment was not a violation since there had been two (2) non-agreement Chief Dispatcher positions on its Pocahontas Division at Bluefield for approximately fifty (50) years, which were still outside the agreement, notwithstanding the abolishment of the Princeton, West Virginia offices and the transfer of four (4) trick train dispatcher positions and two (2) extra train dispatcher positions to Bluefield in 1975. It argues that the Letter Agreement dated, July 8, 1976, in connection with the

aforesaid relocation, recognized the non-agreement status, particularly paragraph 2 thereof, of the two (2) Chief Dispatchers and reinforced such recognition by the interpolation of paragraph 6 which stated that the Letter Agreement superceded the rules of existing agreements, which may be in conflict with it.

In our review of this case, we concur with Carrier's position. While we find the petition properly before us, contrary to Carrier's assertions that the Organization previously failed to appeal two (2) essentially identical claims denied on January 28, 1977 and additionally find in this instance, that it would have been possible to ascertain the identity of the unnamed Claimant, we cannot disregard the explicit language and intended application of the July 8, 1976 Letter Agreement.

Admittedly, there is merit to the Organization's position that Agreement Rule 1(a), by itself, would at least cover one position, on the Pocahontas Division, since it permits the exclusion of one Chief Train Dispatcher from the Agreement's provisions, but the July 8, 1976 Letter Agreement is not a superfluous unrelated understanding. It was purposely written to facilitate the practical implementation of the relocation of the Princeton, West Virginia train dispatching office to Bluefield and recognized the continuing non-bargaining unit status of the two Chief Dispatchers' positions on the Pocahontas Division, one of which is at issue herein. Paragraph 2 states that American Train Dispatchers Association employes holding seniority on the Dispatchers' Princeton-Deepwater Districts will be afforded consideration in the filling of vacancies on either of the two positions, which by definition excludes these positions from agreement coverage. Moreover, Paragraph 6 pointedly asserts that Letter Agreement supercedes the rules of existing agreements, except as otherwise provided. Since Rule 1(a) was not cited as an otherwise exception, we cannot conclude that it was unmodified vis these two positions.

To be sure, it is an undisputed principle in industrial relations that the fundamental purpose of a labor agreement is to preserve to the covered employes the positions and work of the class or craft involved. It is also undisputed that the parties to the agreement are permitted to enter into side or correlative agreements. The July 8, 1976 Letter Agreement effectuated a modification of Agreement Rule 1(a)'s application at Bluefield following the relocation of the Princeton Dispatching office and the Organization recognized this when it consummated the implementing agreement. The two (2) chief dispatcher positions were not intended to be covered by the ATDA's agreement on the Pocahontas Division and as such, the collective agreement was not violated when a non-covered employe performed relief service on the Assistant and/or Night Chief Train Dispatcher position on September 27, 1978.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

LABOR MEMBER'S DISSENT TO
AWARD 23327 (DOCKET TD-23059) AND
AWARD 23328 (DOCKET TD-23060)

An Award is only as good as its reasoning. The purpose of this Dissent is to point to the unsound reasoning which gave birth to Awards 23327 and 23328, apparently the result of failure to consider and weigh all the language of the July 8, 1976 Letter Agreement (Carrier's Exhibit "B").

It is true that Paragraph 2 acknowledged that there were two (2) Chief Dispatchers in the Bluefield office not subject to the applicable working Agreement. The Organization, however, expressly reserved in Paragraph 4 the right to file "future claims alleging violations of agreements between ATDA and NW." This statement must be considered in the context of Paragraph 4 in its entirety:

- "4. With the exception of claim identified by Carrier File No. TD-BF-76-1, all pending claims and grievances in connection with the office relocation herein involved are withdrawn as a result of this settlement and no further claims or grievances in connection therewith will be filed or progressed by the employees or ATDA. This provision does not preclude the filing of future claims alleging violations of agreements between ATDA and NW."

The claim identified by Carrier File No. TD-BF-76-1 is that on pages 1 and 2 of Carrier's Exhibit "D". We thus may observe that at the same time the Organization acknowledged the existence of two positions outside the scope, it was progressing a dispute based upon that fact (which was kept alive by the exception in Paragraph 4) and, additionally, reserved the right to file future claims, of which those decided by Awards 23327 and 23328 are examples. That the Carrier agreed to the provisions of Paragraph 4, as well as those of Paragraph 2, is evidence it did not regard Paragraph 2 as dispositive of claim TD-BF-76-1. The parties do not use meaningless language in their agreements, presumably. Since claim TD-BF-76-1 was still alive, similar claims would be as viable as it was when the Letter Agreement was executed.

Illustrative of the unsound reasoning which resulted in these two Awards is the following quotation from Award 23327:

"... Moreover, Paragraph 6 pointedly asserts that Letter Agreement supercedes [sic] the rules of existing agreements, except as otherwise provided. Since Rule 1(a) was not cited as an otherwise exception, we cannot conclude that it was unmodified vis these two positions."

The syntax and punctuation of Paragraph 6 clearly show that the phrase - "and except as otherwise provided herein" - modifies the concluding provision - "it shall become effective July 16, 1976" - instead of - "This Letter Agreement supersedes the rules of existing agreements which may be in conflict therewith". The date which is the exception is found at the end of Paragraph 3.

The majority wrote, in Award 23327,

"... The July 8, 1976 Letter Agreement effectuated a modifi-

cation of Agreement Rule 1(a)'s application at Bluefield . . ."
and in Award 23328,

"The position at issue was one of two non-agreement Chief
Dispatcher positions at Bluefield, West Virginia, which were ex-
cluded from Agreement coverage, by Letter Agreement, dated Ju-
ly 8, 1976. . . ."

These conclusions can only be inferentially drawn, and then require that
Paragraph 4 of the Letter Agreement be ignored. Agreements must be inter-
preted in their entirety and not piecemeal (Third Division Award 19851) and
may not be deemed to contain meaningless language (Third Division Award
21029).

Dissent is registered for the foregoing reasons.



R. J. Irvin
Labor Member

