

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25959
Docket Number MS-26034

Charlotte Gold, Referee

(J. C. Spinelli

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company
(formerly Akron, Canton & Youngstown Railroad)

STATEMENT OF CLAIM:

"(a) The Akron, Canton & Youngstown Railroad Company (herein after referred to as 'The Carrier or AC&Y') violated its Train Dispatchers (sic) schedule working conditions Agreement, including Articles 1 (a), 1 (b), (4) and 1 (c) when it required, permitted and/or delegated to persons not within the scope of said Agreement performance of work previously performed by Train Dispatchers, when on January 18th., 1981 Mr. C. E. Penrod, Chief of Security, AC&Y was called by City phone, by Medina City Police, Medina, Ohio and informed him that flashers Crossing lights West Smith Road Medina running continuously. Account no Dispatcher on duty and Medina Police unable to get Dispatcher, C. Penrod was called at his home who in turn called Signal Maintainer J. Bell to repair and who (J. Bell) after making Temporary repair, contacted 3rd. trick IBM Clerk S. Cleckner Brittain yard and requested him to have 1st. trick Train Dispatcher cover by Train Order January 19th, 1981, instead of calling the Senior Extra Train Dispatcher to perform such work.

(b) Because of said violation, the Carrier shall now compensate Claimant D. W. Ellington one (1) day's compensation at the rate applicable to Assistant Chief-Trick Train Dispatchers, as the senior extra Train Dispatcher, as the senior Extra Train Dispatcher available at the time stated in paragraph (a) above."

OPINION OF BOARD: On January 18, 1981, Carrier's Chief of Security called a Signal Maintainer for the repair of a Crossing Signal. The Petitioner alleges that such work was performed exclusively by the Superintendent of Transportation-Chief Dispatcher or Train Dispatchers and that its performance by others is a violation of the Akron, Canton & Youngstown Railroad Company and its Train Dispatchers Agreement and the Memorandum of Agreement dated October 29, 1974, specifically Article 1(b)(4):

"(4) Work which prior to the date of this agreement has been, and presently is being performed by the Chief Train Dispatcher will continue to be performed by the Superintendent of Transportation-Chief Dispatcher or others within the scope of the schedule agreement, and will not be delegated to or performed by those not within the scope of the existing schedule agreement."

Carrier argues that Petitioner is not the proper party to present this case for adjudication before this Board. He is no longer a duly elected representative of the former AC&Y Train Dispatcher, as there is no seniority roster nor constituency to be represented. (On or about October 3, 1983, the train dispatching forces of the AC&Y were coordinated into the NW Train Dispatching Office at Brewster, Ohio. The names and seniority dates of the Train Dispatchers on the AC&Y seniority roster were dovetailed into the NW roster and the Dispatchers became subject to the provisions of the former Wheeling and Lake Erie Agreement). Under the Railway Labor Act, the proper party is the American Train Dispatchers Association (ATDA) or a duly elected representative thereof. The Carrier contends that Petitioner is not such a duly elected representative and has no constituency to represent.

Petitioner responds that the individual pursuing the Claim, as well as the individual on whose behalf the Claim is pursued, had standing on the AC&Y roster on the claim date and that the Claim may not be vitiated by subsequent transactions that may have changed their standing on the roster.

Upon a complete review of the record of this case, the Board finds Carrier's position to be the more persuasive. Section 3, First (i) of the Railway Labor Act states that ". . . failing to reach an adjustment . . . disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . .". In the instant case, Carrier, the ATDA, or Claimant would be an appropriate party to present the case for adjudication. While we do not dispute the fact Petitioner was a duly elected Union Official when the Claim arose, neither Claimant nor the ATDA chose to advance the Claim to the Board. Since they would have been the proper Petitioners and did not move the Claim, the Claim must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

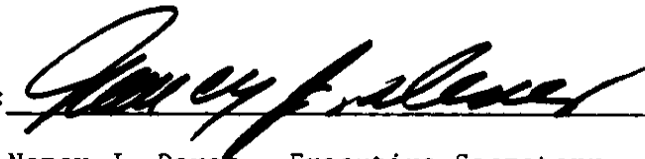
That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.