

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

"Claims of former Train Dispatchers A. D. Rasmussen, P. G. Roberts and G. R. Baldwin for sick leave, including sick leave placed in a Sick Leave Reserve, under the agreement dated February 23, 1976, as revised on August 23, 1983 [Carrier file 8390-4-93]

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Each of the Claimants was a regularly assigned Train Dispatcher in the Carrier's former Battle Creek, Michigan, office at the time that the office was closed and its work was transferred to Pontiac, Michigan, in October 1986.

The Claimants had accumulated various amounts of unused sick leave reserve as of the end of 1985, and each of them had performed enough service as Train Dispatchers in 1986 to entitle them to 13 additional days of sick leave in 1987 under the various Agreements referenced in the "Statement of the Claim."

All of the Claimants chose not to follow their work to the Pontiac office in October of 1986 and thereby changed to clerical service with the Carrier when the former Battle Creek office was closed. The Claimants became clerks, thereby forfeiting their dispatcher seniority.

The dispute involves their Claims for sick leave days in 1987, that they earned in 1986, and unused sick leave reserve, as set forth in the various dispatcher Agreements.

The Claims were filed by the three Claimants in mid-1987. The Claims were brought to this Board by the Dispatchers' Organization after the final Carrier denial in March of 1988.

The Carrier initially raises the issue of jurisdiction, arguing that at no time during the handling of this dispute were the Claimants working under the controlling dispatchers' Agreement. Therefore, according to the Carrier, this Board has no jurisdiction to hear this case since the Dispatchers' Organization is not a proper party under the law.

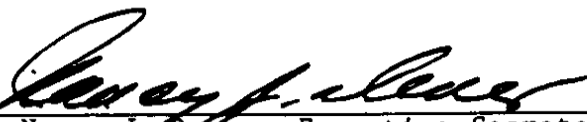
This Board must agree. We find that this Board lacks jurisdiction to resolve this dispute on the merits. The Railway Labor Act states in part that " . . . failing to reach an adjustment . . . disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . ." The Board agrees with the Carrier that the Claimants are now, and were as of the date that they filed their Claims, clerks, and not dispatchers. Consequently, under the law, only the Clerks' Organization, the Claimants, or the Carrier are appropriate parties to invoke the jurisdiction of this Board for the adjudication of this dispute. The ATDA, under the facts of this case, cannot properly advance this dispute to this tribunal to afford us the jurisdiction that we need to decide this dispute.

This Board reached a similar finding in Third Division Award 25959 when we found that the Board had no jurisdiction over that dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.

LABOR MEMBER'S DISSENT
AWARD NO. 29130, DOCKET TD-28766

The majority findings of this award envision strangers to the Agreement, i.e. the Clerks' Organization, as a proper party to refer this dispute to the Board.

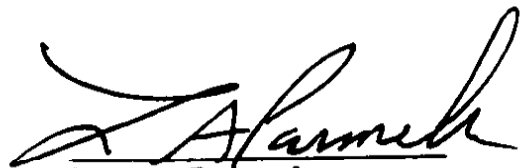
"Consequently, under the law, only the Clerks' Organization, the Claimants, or the Carrier are appropriate parties to evoke the jurisdiction of this Board..." [emphasis added]

The Clerks have no standing, competence or interest in enforcing and interpreting ATDA agreements, nor should they.

If the absurd finding of the majority in this case were carried to its unreasonable conclusion, it might suggest empowerment of any Organization, even those not a party to an agreement, to blindly seek resolution of disputes at this Board, having disastrous results for the employees and the signatory organization.

It certainly cannot be denied that the Claimants, or the Carrier, for that matter, may properly refer a dispute to this Board. But, in this case, to state that the Clerks', but not the train dispatchers, may refer this dispute which involves an agreement solely between the ATDA and the Carrier is sure tomfoolery.

I dissent.


L. A. Parmelee
Labor Member