NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 29552
Docket No. MS-29953
93-3-91-3-340

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Dennis L. Stowe
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(Chicago & North Western
(Transportation Company

STATEMENT OF CLAIM:

"1. The question involved relates to claimant' entitlement to hiring status and seniority under a labor protective agreement entered into by a number of unions and railroads including the Chicago Northwestern Transportation Company generally known as the March 4, 1980 agreement and relating to the takeover of trackage by the former Chicago-Rock Island and Pacific railroad. Claimant will be requesting that his status that a March 4, 1980 hiree be recognized and that he be given fair seniority under the March 4, 1980 agreement..."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

As Third Party in Interest, the American Train Dispatchers Association was advised of the pendency of this dispute and filed a Submission with the Division.

Claimant had been employed by the Chicago Rock Island and Pacific Railroad Company (CRI&P) from 1969 until its demise in 1979. On March 4, 1980, an agreement was signed between various union, including the American Train Dispatchers Association and a

number of railroads relating to the bankruptcy and cessation of operation on the CRI&P. This agreement was identified as the "Miami Accord."

Pursuant to the Interstate Commerce Commission's Interim Service Order No. 1462, the Chicago and North Western Transportation Company became an Interim Service Carrier over certain lines of the former CRI&P. Once the Carrier's interim service operation commenced, it hired six former CRI&P employees pursuant to Article II, Section 9 of the March 4, 1980, Agreement.

Article II, Section 9 reads in part as follows:

> "...In the absence of an agreement, in order to avoid delay in operations, the purchasing carrier may, on a temporary basis, hire qualified and available bankrupt carrier employees to the extent needed where additional jobs are established at the outset. Such employees will be placed at the bottom of the current list of active employees, where they will remain in such status <u>until an agreement is reached</u> respecting seniority in accordance with the provisions of this paragraph."

These six train dispatcher positions were established at Des Moines, Iowa. Claimant was junior to the six employees hired.

In October 1980 due to the consolidation of dispatching work between the Des Moines office and the St. Paul, Minnesota, and Mason City, Iowa, offices additional positions were established. Carrier notified the next ten senior CRI&P dispatchers of the positions. Claimant was hired and first performed service as a train dispatcher on February 16, 1981.

On January 16, 1986, the American Train Dispatchers Association and the Carrier made an Implementing Agreement in accordance with Article II, Section 9(a) of the March 4, 1980 Agreement. This Implementing Agreement provided that Claimant's seniority, as well as the other CRI&P dispatchers' seniority, would be the date on which they first entreed service on this Carrier. In the Claimant's case, this date was February 16, 1981.

On or about February 2, 1984, Claimant was a party to a suit filed in U.S. District Court for the Southern District of Iowa, against Carrier and Transportation and Communications International Union predecessor, Brotherhood of Railway, Airline and Steamship Clerks. The American Train Dispatchers Association was not a party

in this action. In that case, Claimant sought, among other things, that his CRI&P clerical seniority date be "dovetailed" on Carrier's clerks' rosters. On February 19, 1986, the District Court dismissed this matter, as well as other similar disputes. This matter was then appealed to the 8th Circuit Court of Appeals. Individuals represented by the UTU, BLE, RYA and BRAC were included in the appeal. Again, the American Train Dispatchers Association was not a party to this appeal.

On September 14, 1988, the 8th Circuit Court of Appeals remanded the consolidated case (Beardsly v. Chicago and North Western Transportation Company, 850 F. 2nd 1255) back to the District Court for action consistent with its opinion. On January 19, 1990, the District Court issued an order that:

> "new-hire plaintiffs have the right to have their claims submitted to arbitration in accordance with section 3 of the Railway Labor Act."

Additionally, the Court ordered that:

> "In resolving the seniority claims, the arbitrator must determine whether the claims for new-hire plaintiffs are barred by the defense of latches."

While the Beardsly decision did involve a number of Organizations, the Court's review and analysis was wholly directed at the conduct of one of the Organizations. As has been noted, neither was the American Train Dispatchers Association a party involved in the arguments that resulted in the Beardsly decision, nor has this Board been provided with evidence that would require the Board to follow Beardsly in this dispute. In the case at hand, the Claimant contests his February 16, 1981, train dispatcher's seniority date. Claimant derived no rights to arbitration as a result of the Court action, with respect to his C&NWT train dispatcher's seniority date.

The jurisdiction of the Board under Section 3, First of the Railway Labor Act, is limited to those disputes between an employee or a group of employees and a carrier or carriers growing out of grievances or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, that have been handled in the usual manner up to and including the chief operating officer designated to handle such disputes.

This dispute originated with Claimant's formal grievance on March 21, 1990, over four years after the January 16, 1986, Implementing Agreement. We find the effective date of the Implementing Agreement started the time limits under Rule 20(a) of the collective bargaining Agreement. As such, Claimant's grievance

is procedurally defective and not ripe for review on its merits. Further, beyond the existing contract, the claim in this matter was initiated some eighteen months after the Beardsly decision was issued. While the Claimant has argued that his right to be heard in this matter flows from Beardsly, there is no basis advanced, other than that this Board should ignore the existing contract and our own rules, and overlook the untimeliness or the present claim. Further, pursuant to the rules of this Board, Claimant has been afforded hearings before the Division to argue the propriety of his claim.

Claimant has argued that the January 16, 1986, Agreement is improper and invalid because it did not require that the claimant's seniority be "dovetailed." However, the record substantiated that Claimant was treated no differently from other former CRI&P train dispatchers who are governed by the January 16, 1986, Agreement. It is not the function of this Board to determine the validity of collectively bargained Agreements. See, in this regard, Third Division Awards 21853, 21926, 22304, 22318; First Division Awards 23135, 21459; Second Division Awards 8732, 8394 and 6452.

Further, while the presentation of this claim may have some unique aspects, the issues raised are not new to this Board (Third Division Awards 27747, 27219; Fourth Division Award 4625; Second Division Award 11244).

Therefore, we conclude that no timely claim was filed with the Carrier in this matter; that the Beardsly decision does not dictate our disposition of this dispute since Claimant's train dispatcher rights and the January 16, 1986 Agreement made pursuant to the requirements of the March 4, 1980, "Miami Accord", were not matters decided in that case; that Claimant's assertion of a right to carry his former seniority to his employment on this Carrier is not supported by Section 9 of Article II of the March 4, 1980 Agreement; that there is no evidentiary basis to consider the January 16, 1986 Agreement as being anything other than what it is - the best that the signatory parties could agree upon.

In view of all of the foregoing, this claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.