

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30266
Docket No. MS-30010
94-3-91-3-61

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (K. F. Arnoldsen, J. C. McCall, S. G. Oels,
(G. P. Sharp, J. R. Summers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. Whether Union Pacific Railroad Co., can effect a relocation of its dispatchers' office and dispatcher work from Sacramento, California, to Omaha, Nebraska, before reaching agreement with its dispatcher employees employed in Sacramento, as to benefits applicable to those dispatchers affected by such relocation in accordance with the Mediation Agreement of april 7, 1976, executed for the benefit of such dispatchers?
2. If the answer to Question No. 1 is in the negative, the dispatchers' office and dispatcher work will be returned to Sacramento to the same extent as existed immediately prior to such relocation, and Claimants returned to Sacramento to their former positions and status, cost free, within sixty (60) days; unless Carrier and Claimants have reached agreement disposing of this matter prior to the expiration of the sixty (60) day period."

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 employee 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 were given due notice of hearing thereon.

This dispute involves Carrier's alleged violation of the April 7, 1976, Mediation Agreement between the Western Pacific Railroad Co. (Carrier) and its Employees (Train Dispatchers Arnoldsen, McCall, Oels, Sharp and Summers), when "it relocated its Sacramento, California, dispatching office to a location outside of Sacramento County, California, before reaching agreement with dispatcher employees in the Sacramento office." To properly decide this Claim, it is necessary to understand pertinent history between the Western Pacific (WP) and the Claimants, previously represented by the American Train Dispatchers Association (ATDA).

In 1976, Western Pacific served the following notice:

"In accordance with Mediation Agreement made on June 16, 1966, and, in particular, Article I, Section 4 thereof, this is to advise that it is Carrier's intent to relocate the Western Pacific Railroad Company train dispatcher's office and facilities from Sacramento, California, to San Francisco, California.

As provided in Section 4 of the aforementioned Mediation Agreement, the following are the proposed changes contemplated:

- (1) Following the relocation of Western Pacific train dispatcher's office and facilities, there will not be any train dispatchers' positions remaining in Sacramento.
- (2) Protective benefits as outlined in Sections 5 to 11 inclusive of Article I of the Mediation Agreement made on June 16, 1966, will be extended to each employee represented by the ATDA who is affected as a result of this relocation."

In response, the ATDA filed several notices under Section 6 of the Railway Labor Act (RLA). When subsequent conferences failed to resolve the dispute, the ATDA "was forced to seek help from the U. S. District Court in San Francisco to delay the move until the Notices were acted upon." The Court granted injunctive relief preserving the status quo until the Section 6 Notices were disposed of by the Parties. Carrier appealed the injunction and pending the appeal hearing, W P and the ATDA signed a Mediation Agreement on April 7, 1976. With respect to this dispute, Paragraph 1 of that Agreement provided:

"Any proposed relocation, in whole or in part, of the dispatchers' office which is currently located at 19th and J Streets in Sacramento, California, to any site outside of the limits of Sacramento County shall not be effected until Carrier and Association have agreed upon benefits applicable to dispatchers affected by such relocation; provided however, that this provision shall be cancelled and of no force or effect in the event the Mediation Agreement of June 16, 1966, (See Case No. A-7460) is amended in the future and Carrier and Association are parties to such amendment."

Six and one-half years later, in December 1982, final approval for the Union Pacific (UP), Missouri Pacific (MP) and Western Pacific (WP) merger was granted. All MP and WP employees, including the five Claimants, became UP employees. MP and WP dispatchers were represented by the ATDA at the time of the merger, whereas UP's dispatchers had been essentially unrepresented for collective bargaining purposes. UP had considered its dispatchers "management employees" and treated them as such. However, UP voluntarily recognized union representation on the MP and WP, and succeeded to the various collective bargaining agreements between the former MP and WP dispatchers and the ATDA.

Subsequent to the merger, however, ATDA petitioned the National Mediation Board (NMB) for an election to determine representation status for dispatchers on the consolidated UP System, i.e., inclusive of the formerly unrepresented UP dispatchers. The NMB determined that there were 325 dispatchers who qualified as eligible voters. However, of the 325 eligible voters on the merged properties, only dispatchers voted in favor of the ATDA. Therefore, on August 9, 1988, the National Mediation Board decertified the ATDA as representative of any of the UP dispatcher, inclusive of the formerly represented former WP and MP dispatchers.

On August 11, 1988, the Carrier sent correspondence to ATDA stating:

"On August 11, 1988, the National Mediation Board notified Union Pacific Railroad of the results of the representation election conducted in NMB Case No. R5709.

The effect of that election is to cause dispatchers employed by Union Pacific Railroad to become unrepresented for purposes of collective bargaining. A further effect is the termination of all collective bargaining agreements between your Organization and Union Pacific Railroad Company pertaining to that craft or class of employees.

A copy of the NMB's Notice is attached hereto."

Since the decertification, UP has treated the former MP and WP dispatchers, as well as the "original" UP dispatchers, as Management employees each of whom receive the following management benefits: relocation, buyouts, wages, pension eligibility, company savings plan, life insurance, sickness and disability insurance, vacations, accidental death and dismemberment insurance, business travel insurance and matching gift plans. The fact that these benefits provided to management employees are "significantly better" than those provided to Claimants under the former WP/ATDA Agreement, except for the moving benefits which Claimant's seek under the 1976 Mediation Agreement, is not disputed. In short, Claimants, perhaps understandably, are seeking through this Claim the "best of both worlds".

Claimants McCall and Summers made inquiries following the merger as to when and where the Sacramento dispatchers might be moved. UP advised at that time that it had not finalized plans for the consolidation of dispatching functions. However, on October 20, 1988, Carrier advised Mr. McCall that the transfer probably would occur sometime during the third quarter of 1990. When Claimant McCall inquired if UP intended to "honor all Agreements" in place between its Sacramento dispatchers and the Carrier, the Carrier responded:

"4. Question:

Will the UP honor all Agreements in place between its Sacramento Dispatchers and the Carrier?

Answer:

It is my view, based on the opinion of our Legal Department, that the collective bargaining agreement between the American Train Dispatchers Association in Sacramento and the carrier has terminated. We have always honored valid collective bargaining agreements and will continue to honor valid collective bargaining agreements with our labor unions. Since there no longer is a labor union representing the Sacramento dispatchers or a collective bargaining agreement between the Sacramento dispatchers and the Union Pacific, we no longer have an agreement to honor. We view all of you as management employees, and we intend to treat all of you with the respect, benefits and other procedures afforded to management employees on Union pacific.

5. Question:

In particular, will the UP honor the April 7, 1976, Agreement concerning any relocation of the Sacramento Dispatchers office?

Answer:

As I stated above, my view, based on the advise of our Legal Department, is that the 1976 Sacramento agreement terminated when the certification of the American Train Dispatchers Association as the representative of dispatchers in Sacramento, terminated.

On January 28, 1991, an attorney, retained by the Claimants, filed a Notice of Intent with the Board to file an Ex Parte Submission with the Third Division. However, on January 31, 1991, the five Claimants also filed a civil complaint with the United States District Court requesting the following relief:

- "1. Declare that defendant UP has failed to exert every reasonable effort to make and maintain agreements and to settle all disputes in violation of Section 2 First of the Railway Labor Act by asserting that the employees' rights under the April 7, 1976 Mediation Agreement are null and void; by refusing to honor its contractual commitment to negotiate benefits with dispatchers affected by the planned relocation of the Sacramento office to Omaha, Nebraska; and by refusing to withhold its moves to Omaha until employee rights under the April 7, 1976 Mediation Agreement are properly determined.
2. Preliminary and permanently enjoined UP, its officers, agents and employees from relocating its Sacramento dispatchers' office, the work normally performed in that office, or the employees normally assigned to that office until it has complied with its obligations to negotiate with each of the plaintiffs for the 'benefits applicable' to such relocation.
3. Grant plaintiffs such other and further relief as this Court deems to be just and proper, including costs of this action."

The District Court denied the motion for preliminary injunction asserting: "...It is also very doubtful that the 1976 Mediation Agreement between the American Train Dispatchers Association and the Western Pacific Railroad, which is the subject of plaintiff's complaint, survived the decertification of the ATDA as plaintiffs' collective bargaining representative on August 9, 1988." On June 4, 1993, the remainder of the complaint was dismissed by the Parties.

Although the June 4, 1993 decision to dismiss the remainder of the complaint brought closure to the issue in United States District Court, the dispute remained unresolved on the property. For their part, Claimants acknowledged that they were "not claiming that all collective bargaining agreements continued to exist after the decertification. In fact, the collective bargaining agreements did terminate upon the decertification of the ATDA. The real issue is whether individual vested employee rights should be enforced."

For its part, Carrier continued to assert that the Claim "does not present a dispute between UP and a Union, and has neither statutory or Agreement support." Further, Carrier maintained that the 1976 Mediation Agreement terminated when the ATDA was decertified, and that the Claimants' "attempt" to bring the "vested rights theory" from the National Labor Relations Act to the Railway Labor Act, is "seriously flawed." Further correspondence failed to resolve the dispute which is now before this Board for adjudication.

This Claim is expressly grounded in the 1976 Mediation Agreement between the Western Pacific Railroad and Western Pacific train dispatchers, formerly represented by the American Train Dispatchers Association. Along with all other agreements between these contracting Parties, the 1976 Mediation Agreement was rendered null and void when the ATDA was decertified by the NMB after losing representation rights on the merged property. Pursuant to the August 9, 1988, decertification of the ATDA, Carrier exercised its legal right to notify the ATDA that "all collective bargaining agreements between the ATDA and UP pertaining to dispatchers have been terminated as a result of the decertification." With the decertification of the recognized or certified bargaining representative, Claimant's have no individual rights to enforce the now defunct 1976 Mediation Agreement. Therefore, Carrier is correct in its argument that Claimants' Claim has no Agreement basis.

Claimants further contended that UP refused to bargain with them and reach agreement with them before relocating the Sacramento Dispatchers' Office to Omaha. Again, the flaw in Claimants contention is that UP is not obligated to bargain with individual employees regarding application of an Agreement which no longer exists. Based on the foregoing, this Claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois this 19th day of July 1994.