

**Award No. 11252**  
**Docket No. TD-13215**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Preston J. Moore, Referee

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**THE PENNSYLVANIA RAILROAD COMPANY**

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

(a) The Pennsylvania Railroad Company, (hereinafter referred to as "the Carrier"), violated the effective schedule Agreement between the parties, Part I, Scope, in particular, when during the period beginning at 6:00 A. M. September 1, 1960 and ending at 3:00 P. M. September 12, 1960, it prevented the claimant employes from performing train dispatcher service in directing the movement of trains and/or track motor cars over Carrier's lines between G. Tower (Belvidere, New Jersey); C. R. Tower; C. R. Siding; DY Tower (Hudson Yard); PG Tower (Phillipsburg, New Jersey) L&HR Junction (Easton, Pennsylvania), during which period said train dispatcher work was performed by employes of another carrier not within the Scope of the Agreement.

(b) The Carrier shall now be required to compensate the individual Claimants herein at pro rata daily rate of train dispatcher, for each day and each trick, September 1 to 11 inclusive, the senior available employe of those herein named, all of whom were qualified, available, rested and unemployed during said period: N. S. Holcomb, Mr. Friedman, M. H. Bruce, H. E. Bohan, D. E. Morrissey, G. W. Fredericks, T. F. Dechan, T. M. Clarke, W. A. O'Toole, J. P. Nolan, Walter Berko, E. J. DeBosky, A. E. Hoagland, J. N. Post.

**EMPLOYEES' STATEMENT OF FACTS:** There is a Schedule Agreement in effect between the parties, effective June 1, 1960, a copy of which is on file with this Board and which by this reference is incorporated into this submission the same as though fully set out herein.

Part I of said Agreement is applicable to the individual claimant train dispatchers involved in this dispute. For ready reference the pertinent provisions of the Scope Rule are:

"The provisions set forth in Part I of this Agreement shall con-

In this connection, the Claimants, whose positions were abolished, would have the status of extra employes and their services would have been governed by Regulation 4-A-3(b) reading:

“(b) An extra employe notified or called to perform work, and reporting for such work, shall be paid a minimum of three (3) hours at the pro rata rate of the assignment for which called.”

Therefore, the Carrier submits that in seniority order, Claimants would be entitled to payment as provided in 4-A-3(b) dependent upon the actual L&H traffic on the Branch.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of “grievances or out of the interpretation or application or agreements concerning rates of pay, rules or working conditions.” The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

It has been shown that no work was performed by employes of the Lehigh and Hudson Railroad to which Train Dispatchers have established any right; that the Scope of the Rules Agreement was not violated; and, that the Claimants are not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the Employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a dispute between The American Train Dispatchers Association and The Pennsylvania Railroad Company.

Because of a strike by shopcraft employes, the Carrier ceased operation of its trains September 1, 1960.

The line involved in this dispute is a 12 mile portion of track from Carrier's Block Station to the L&HR Hudson Yard at Phillipsburg. This line had been operated as main track and had been under the control of Train Dispatchers of this Carrier. The Carrier advised the L&HR that they could continue to run their trains between Tower and Hudson Yard but with the provisions that it could only be operated as a yard track.

The Petitioner contends that:

"(1) The Scope rule of the Schedule Agreement guarantees the right of Train Dispatchers to perform all train dispatching service on the property of the Carrier.

"(2) Train Dispatching work was performed on the property of the Carrier by persons not within the Scope of the Schedule Agreement between the Carrier and its dispatchers."

The Petitioner has failed to show that train dispatcher work was performed. We cannot consider issues which were not raised upon the property.

For the foregoing reasons we find the Agreement was not violated.

**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 Employes involved in this dispute are respectively Carrier and Employes 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.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1963.

LABOR MEMBER'S DISSENT TO AWARD 11252

DOCKET TD-13215

This Award incorrectly holds (and condones the procedure used by Carrier) that:

"The Carrier advised the L&HR that they could continue to run their trains between Tower and Hudson Yard but with the provision that it could only be operated as a yard track."

It is well-known in the railroad industry, but ignored by the majority, that the right to operate on railroads is conferred by timetable authority or train order authority.

The majority completely ignores the fact that Timetable No. 9 of the New York Region designates this portion of track as "main track" in charge of PRR Dispatchers located at New York City.

This time table authority was never superceded, annulled or amended. The majority erred in holding that merely by some undisclosed agreement with another Railroad, the Carrier could redesignate the track and effect a temporary change in the operation thereon without either a change of timetable or the use of train orders.

The Award further incorrectly holds that:

"The Petitioner has failed to show that train dispatcher work was performed."

It is conclusively shown and proven in the record, and by the Carrier, that trains DID move over this portion of the Pennsylvania Railroad during the period here involved.

To say that train dispatcher work was not shown to have been performed is grossly incorrect.

Trains operated over a designated main track, (unilaterally changed to a yard operation without benefit of a change in timetable or by train order) and operated by "message" issued by a foreign railroad dispatcher located at Warwick, New York, who was neither qualified on the PRR propetry nor had any contractual right to exercise the authority of a train dispatcher to be in charge of the movement of trains.

It is further evident from the Record that in all other locations where Joint Facility operations were required, the Carrier DID provide and maintain sufficient train dispatchers to perform this necessary service for which they were being compensated by the L&HR Railroad and should have so provided here.

/s/ R. H. Hack

R. H. Hack, Labor Member