



Award No. 14385
Docket No. TD-15603

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company, (hereinafter referred to as "the Carrier"), violated, and continues to violate the effective Schedule Agreement between the parties, Article 1 thereof in particular, when, beginning May 7, 1964, and since, the Carrier has required and/or permitted employes and/or supervisors not within the scope of the said Agreement to perform work covered thereby.

(b) The Carrier be required to compensate Extra Train Dispatchers E. Fyffe and R. J. Morgan and one additional extra train dispatcher one day's compensation at applicable rate for each day, beginning May 7, 1964, and continuing until Carrier has terminated said violation because of the violation of the Schedule Agreement as referred to in paragraph (a) hereof.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference Article 1 of said Agreement is here quoted in full:

"(a) This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement.

NOTE (1): Positions of excepted chief dispatcher will be filled by employes holding seniority under this agreement.

(b) Definitions:

OPINION OF BOARD: On May 7, 1964, Carrier discontinued its train dispatching office at Chaffee, Missouri. The force at that office consisted of one Chief Dispatcher, three trick train dispatchers on an around the clock, seven days per week basis and the necessary relief employes. At the same time counterpart positions were established in its Springfield Office. The claim is made over an amount of work which was not moved to Springfield when the dispatching functions were. Each category of work will be discussed separately.

1. Track indicators. The movement of trains into the yards at Chaffee was signaled by track indicators at the north and south ends of the yards and were controlled from a panel or console in the train dispatchers' room. When the dispatching was moved to Springfield the panel was moved to another office and its control and operation was assigned to employes not subject to the Train Dispatchers' Agreement. The removal of this work is claimed as a violation of the Scope Rule, which reads as follows:

"ARTICLE 1.

(a) Scope.

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement.

NOTE (1): Positions of excepted chief dispatcher will be filled by employes holding seniority under this agreement.

(b) Definitions:

1. Chief, night chief and assistant chief dispatcher positions:

These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick train dispatchers:

This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

(c) Section (b) of this Article shall not operate to restrict the performance of work as between the respective classes herein defined, but the duties of these classes may not be performed by other officers or employes for the purpose of avoiding the employment of additional train dispatchers."

The Scope Rule grants the exclusive duty of being primarily responsible for the movement of trains by train orders, or otherwise. It is clear that if the operation of the track indicators falls within the definition of "movement of trains" Claimants have a contract right to the work.

The Carrier asserts that the track indicators governed the movement of trains in the yard and that yarding movements are not considered train movements within the meaning of the Scope Rule.

We think that the distinction between the movement of trains on the line and in the yard is a valid one. To hold otherwise, would mean that every time a yard master gave a hand signal to a train in a yard he would be invading the jurisdiction of the train dispatcher. We do not think the parties intended so broad a grant of exclusive rights. Article 1, Section b, subdivision 2, in stating that dispatchers have primary responsibility for the movement of trains "by train order, or otherwise" supports this principle. The phrase "or otherwise" refers to other ways of moving trains which are substitutes for train orders.

While we recognize the distinction between on line and yard movement of trains, it is not clear that these track indicators merely gave yarding instructions or whether they also affected the movement of trains off the line into the yard. The record is silent as to where the indicators were located with reference to the main line. This lack of specificity, while fatal to the argument that it was embraced within the contract right to move trains, is very much alive with respect to the contract grant of the right to perform related work.

We have held, in Award 13329 (Dorsey) which involved the present parties, that the exclusive right to "related" work must be proved by the fact that this work historically, and customarily was performed by dispatchers. Indeed, the parties, recognizing that the right to this work would probably hinge on history and custom, submitted evidence to support their respective positions and each side has attacked the other's evidence as having been submitted in violation of the Board's procedural rules as set forth in Circular No. 1.

The Employer contended on the property that the control of track indicators at other locations was done by yardmasters or telegraphers. The details, however, were not revealed until they appeared in Carrier's Ex parte submission. We think we must reject these details as in violation of Circular No. 1, which requires, "all data submitted in support of Carrier's position," must have been submitted to the Organization.

The statement that track indicators were operated by other crafts at other locations, was made on the property to the Organization and is admissible. It has been attacked, however, as mere assertion and not proof. An assertion which is not denied although there is both time and opportunity to deny it must be deemed uncontroverted and, therefore, proof of its substance. The Organization never took the position that it had controlled track indicators throughout the Carrier's system. On the contrary, it asserted that it had always done this work at Chaffee and it submitted 8 statements in support of this assertion. Carrier attacked the admissibility of this data as having been submitted after final rejection by Carrier's highest officer.

We do not think that this evidence violates Circular No. 1. It was submitted to Carrier and was made a part of the dispute by Carrier's acceptance of it even though Carrier attacked it as being late.

Insofar as the track indicators are concerned, the rejection or acceptance of this evidence is not important. We have held that where an agreement is system-wide the proof of exclusivity must be system-wide. Award 13579. The Organization's proof not being system-wide does not satisfy this requirement.

2. Reports, penalty time slips, deadhead slips and CT-49 reports. The record indicates that with the exception of the CT-49 reports, the performance

of duties in connection with the handling of this work was transferred to the agent at Chaffee. The CT-49 reports continue to be handled by the Chief Dispatcher.

This work, not specifically mentioned in the Scope Rule, is claimed as "related" work. As stated above, to claim the exclusive right to this work the Organization is obliged to show that it was historically and traditionally theirs on a system-wide basis. Proof that it was always handled by train dispatchers at Chaffee is not proof that the parties intended that they have a contractual right thereto and, conversely, the fact that such work was handled by other crafts elsewhere is proof that Carrier did not intend to grant an exclusive right to this work under an agreement which applies throughout the system.

3. Car distribution. The Scope Rule specifically grants to the Chief, night Chief and assistant chief dispatcher positions the responsibility to supervise the distribution of equipment. This includes the car distribution work performed at Chaffee. Carrier's notice of May 4, 1964, which announced the removal of train dispatching to Springfield, stated,

"Car distribution will still be handled from Chaffee."

The Chief Dispatcher, in a letter dated July 13, 1964, stated,

"We are still responsible for the distribution of cars on River division, however only when situations become critical do we cut in on the Car Distributor at Chaffee."

We cannot tell from the record whether the right to supervise car distribution has been violated by Carrier. The principle that the supervision belongs to the Chief Dispatchers has been conceded but whether, in fact, the supervision has been relinquished is not clear. One may question whether cutting in on the Car Distributor only when situations become critical constitutes supervision, especially when the supervisor is 200 miles away and the Carrier has announced that car distribution will still be handled from Chaffee. If a Chief Dispatcher is supervising only on a nominal basis, while the real day by day supervision is done by someone else, it may well be that the agreement has been violated. In the absence of proof, however, we cannot so hold.

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 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.

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