

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award. Number 23530
Docket Number TD-22944

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: (a) The Atchison, Topeka and Santa Fe Railway Company, (hereinafter referred to as "the **Carrier**"), violated the currently effective agreement between the parties to this **dispute, particularly Article I, Section 1; Article II, Sections 7, 10a, 10c, 12 and 13; Article IV, Sections 2 and 4; Article X Section 8 and Article XI Section 1,** having removed part of the Fourth District between Glendale and Mobest, Arizona Albuquerque Division, from the train order method of operation directed by Train Dispatchers at Winslow, **Arizona,** covered by the agreement, to Yard Limits method of operation as per rule 93, Rules Operating Department 1966, designating **party** or parties unknown, **not** covered by the Agreement, the **responsibility** for issuing instructions pertaining to the **movement** of trains between these two points. **This constitutes a transfer of work** from the train dispatchers at Winslow, Arizona to party or parties unknown at/or near Glendale.

(b) The Carrier shall now compensate three (3) train dispatchers daily, eight (8) hours each at pro-rata rate, for trick train dispatchers assigned from:

- (1) 12:01 a.m. to 8:00 a.m.
- (2) 8:00 a.m. to 4:00 p.m.
- (3) 4:00 p.m. to 11:59 p.m.

for each and every day **commencing** May 12, 1973 and continuing therefrom until this dispute is settled. **Compensation** to be paid for the senior unassigned train **dispatcher available** for each trick or, if none available, the regularly assigned train dispatcher observing rest days.

OPINION OF BOARD: In April 1973, Carrier issued the following orders:

"On Fourth District, effective 12:01 a.m., May 1, 1973, train order operation between Mobest and Glendale is discontinued. Rule 93 applies."

Carrier further ordered that:

"At Glendale, Arizona, **Eastward** trains will head in unless Glendale operator gives permission to hold Main Line."

This change in operating procedure eliminated about six miles of track from train order operation.

The Organization claims that this change violates the Agreement. It argues that it constitutes a material change in the territory controlled by the **dispatcher** at Winslow. Article II of the schedule Agreement requires that all dispatcher assignments affected by this order must be abolished, **reestablished**, and rebid.

It also argues that the work of controlling trains between Mobest and Glendale **has** been turned over to someone not covered by the Agreement and that this is a violation of the Agreement.

The Organization finally argues that Carrier's contention that it only extended the **yard** limits in this instance is false. The yard limits have always extended from Phoenix to Beardslly. That is considerably beyond Glendale. Thus, Carrier's **argument on** this point has no meaning.

The Organization is basically arguing that Carrier, by changing from a train order system to a Rule 93 operation between Mobest **and** Glendale, is "whittling away" at the work traditionally done by dispatchers and assigning that work to nondispatchers. **This diminution** of the work **is** a contract **violation**. **The** Organization is consequently requesting that these dispatchers be paid eight hours each from **May 12, 1973**, to the settlement of this claim.

Carrier presents numerous arguments in support of its position. It argues that it is not required to obtain the **Organization's** approval when it extends yard limits. It has extended the **yard** limits in **numerous** other locations and no grievance was filed. It has not abolished any dispatchers' positions. No dispatchers have lost wages. **The work in** question has been eliminated, not transferred **to** others. The Organization has not identified which of its members have been damaged by Carrier's **actions** or which **employees** have been assigned the work formerly done by the claimants.

Carrier states that road switchers have always operated under Rule 93 between Mobest and Glendale.

After a **thorough** review and **discussion** of the record of this case, this Board must conclude that the Organization has not presented a case sufficiently persuasive to justify its position. 'The Organization has **made** certain allegations, but they have not been supported by fact or testimony. **The** Organization has failed to demonstrate how Carrier's action of changing from a train order operation to a Rule 93 operation between Mobest and Glendale has violated the Agreement. At one point in its presentation, the Organization argued that removing the section between Mobest and Glendale from the control of the dispatcher was a "material change" and that, **as** such, Article II became operative. This Board is not persuaded that what has taken place here is a material change, **as** contemplated by Article II. Dispatchers at Winslow control train movement on over 530 miles of track. **The** area affected by Carrier's action is about six miles. The Organization has failed to demonstrate how excluding this small **percentage** of the total track can be considered as material **and a change sufficiently** significant to warrant abolishing jobs and rebidding them.

The Organization has also failed to identify the claimants in this case or the **employees** who are doing the disputed work. Absent such specificity, it is impossible for the Board to award monetary **damages**, as claimed by the Organization, if it found that a violation existed.

It is the opinion of **this Board** that the Organization did not carry its burden of proof in this case. The Organization has fallen short of proving that Carrier's action is, in fact, a contract violation.

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

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That the Agreement has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Pulver*

Dated at Chicago, Illinois this **26th** day of **February 1982**.



LABOR MEMBER'S DISSENT
TO AWARD 23530 (DOCKET TD-22944)
Referee Dennis

The Award correctly states, on page 2,

"It [the Organization] argues that the work of controlling trains between Mobest and Glendale has been turned over to someone not covered by the Agreement and that this is a violation of the Agreement."

The Carrier did not, at any time, dispute the Organization's assertion. An unchallenged assertion must be deemed correct.

The Carrier did raise a defense, however, stating that it extended the yard limits from Mobest to Glendale. The Employees demonstrated conclusively that the yard limits were not extended. The Carrier's defense merits no consideration, for it is patently untrue. The extension of yard limits, even had it been true, had no effect on the change of the train dispatchers' territorial assignment, since they directed the movement of trains both within and without yard limits, as shown in the record.

As for Carrier's arguments that the train dispatchers' scope rule is a general scope rule and that yardmasters have control and jurisdiction of yards, as the Employees took pains to point out, these are new arguments never raised during handling on the property and should have received no consideration by this Board.

The Award, on page 3, states, "The Organization has also failed to identify the claimants in this case or the employees who are doing the disputed work. . . ." First, the Carrier itself made no allegation that it could not identify the individual claimants. In a continuing claim, it would be strange indeed if the claimants were identified by their Christian names. Third Division Awards 20358, 22800, and 23062.

Second, the record shows that both Employees and Carrier identified employees to whom the work was transferred. In the record, Albuquerque Division Bulletin No. 666 is quoted:

"At Glendale, Arizona, Eastward trains will head in unless Glendale Operator gives permission to hold Main Line."

Labor Member's Dissent to Award 23530 (Docket TD-22944) - Continued

And the Carrier stated in its Ex Parte Submission:

" . . . Yardmasters not only have jurisdiction over all trains within yards but Yardmasters customarily and traditionally exercise jurisdiction over trains and engines within yard limits."

Thus proving that it expects its yardmasters to exercise jurisdiction in the area in question.

This is one more example of the majority's propensity to accept what the carriers say as unquestionably true; what the organization says is unsupported assertion.



R. J. Irvin
Labor Member

