SPECIAL BOARD OF ADJUSTMENT NO. 1057

Award No. 1

Parties to Dispute: American Train Dispatchers Association and CSX Transportation, Inc.

Statement of Claim: (a) CSX Transportation, Inc. ("Carrier") violated Section 4(c) of its former Chessie System Train Dispatchers' protective agreement dated September 8, 1981 (Appendix 3 to basic schedule agreement) when it failed to post thirty days' written notice in its Washington, IN and Cincinnati, OH train dispatching offices, and send copy to the Chessie System General Chairman, before it transferred the Storrs-Cochran Jct. trick train dispatcher territory from the Washington office to the Cincinnati office on February 23, 1990.

(b) Because of said violation, the Carrier shall now compensate:

(1) the Train Dispatchers who were filling the various positions in the Washington, IN office as of February 23, 1990, one (1) day's pay at the rate applicable to such persons for service performed in such office e, for each date beginning February 24, 1990, and

(2) the Trick Train Dispatchers in the Cincinnati, OH office who perform service in connection with the Storrs-Cochran Jct. territory on and after February 23, 1990, one (1) days pay at the rate applicable to Trick Train Dispatchers in said office for each date beginning February 23, 1990, and continuing on each shift and date thereafter until such violation is terminated, in addition to any other compensation such claimants may have for any such dates.

(c) The identifies of individual claimants included in paragraphs (b)(1) and (b) (2) shall be determined by a joint check of the Carrier's records, in order to avoid the necessity of presenting a multiplicity of daily claims.

Background

CSX Transportation, Inc. (hereinafter "CSXT" or "Carrier"), in September 1987 commenced implementation of Phase I of its project to centralize the majority of its line-of-road and terminal train

dispatching functions performed in multiple field train dispatching offices into a highly technical computer-assisted operation located in Jacksonville, Florida. Carrier contemplated, when said project was completed, that all train dispatching operations covering CSXT's twenty-thousand (20,000) mile rail system, extending over nineteen (19) states east of the Mississippi River, would emanate from the said Jacksonville centralized high-tech facility.

Transferring these train dispatching functions into the centralized Jacksonville, Florida facility was and is being accomplished pursuant to the authority granted by the Interstate Commerce Commission ("ICC") in Finance Docket No. 28905 (Sub-No. 1) and related proceedings; Finance Docket No. 30053; Finance Docket No. 31033; and in Finance Docket No. 31106. The ICC, of course, imposed the mandated protection for entitled employees enunciated in New York Dock Ry. -Control-Brooklyn Eastern Distr., 360 I.C.C. 60 (1979) (hereinafter called "New York Dock" (NYD)).

CSXT, on May 18, 1989, served notice on the three representatives of the American Train Dispatchers Association (hereinafter called "ATDA" or "Organization") pursuant to the requirements of Article I, Section 4(a) of New York Dock, advising them of its intent to commence the project's Phase II which would involve the transfer and coordination of additional train dispatching functions performed at various locations on the CSXT property, to Jacksonville, Florida centralized operation (Carrier's Exhibit "A"). Said Notice had attached thereto another notice addressed "TO TRAIN DISPATCHER EMPLOYEES" which was posted to the employees at the locations to be

affected by this Phase II implementation, including those in the Washington, Indiana Train Dispatching facility, advising them of this contemplated transaction.

During the June 20, 1989 initial meeting on an implementing agreement, Carrier representatives asserted that ATDA representatives were fully advised as to the scope of this Phase II implementation, particularly as to the fact that in closing the Washington, Indiana Train Dispatching operations, a small amount of dispatching functions involving the transfer of CTC equipment controlling the operations at Lawrenceburg and Dearborn, Indiana would be relocated from the Train Dispatching operation at Washington, Indiana to the Train Dispatching operation at Cincinnati, Ohio from which these operations would be performed. The ATDA while admitting something had been said vigorously denied that the clarity thereof was ever transmitted.

Ultimately, the required New York Dock implementing agreement was consumated by the parties on August 15, 1989.

In any event, it is clear from said Memorandum of Agreement that neither party suggested a need to incorporate any reference to this Washington, IN fact in the implementing agreement or a reference thereto in a "side letter" to said implementing agreement.

On February 12, 1990, CSXT's Chief Dispatcher T. Babbs at Cincinnati issued instructions, in essence, that Train Dispatchers in that office should arrange to be transported over the territory between Storrs and Cochran Jct., in order to gain qualification thereon. Said Notice implied that such territory was being transferred to the Cincinnati, OH office.

CSTX Jacksonville, FL Chief Dispatcher on February 19, 1990 issued notice that the Washington, IN office train dispatcher assignment would be abolished after completion of the first trick tour of duty on February 23, 1990.

Carrier received a datafaxed transmission letter on February 20, 1990. Irvin contended the closure of the Washington, Indiana Train Dispatching operation constituted a major dispute under the Railway Labor Act. ATDA President Irvin complained that the Carrier did not furnish ATDA with notification pursuant to the terms of the parties' September 8, 1981 Appendix 2 - Property Protection Agreement covering the former Chessie System and ATDA, advising of CSXT's intent to relocate certain train dispatching functions from the Washington, Indiana operation to the Cincinnati, Ohio train dispatching operation and that any such action on the part of the Carrier would constitute a major dispute under the Railway Labor Act.

The Carrier responded, February 21, 1990, to ATDA President R. J. Irvin and asserted that in fact the Carrier did provide ATDA with appropriate notification pursuant to the requirements of New York Dock, that it had discussed the Washington, Indiana matter fully with ATDA's representatives in conferences. The Carrier offered to meet him on this matter and suggested a date of February 26, 1990 for such meeting.

ATDA President Irvin responded on February 26, 1990 to the Carrier's February 21 letter advising, therein "...assuming that you did give verbal advice and notification of this intended modification of the May 18, 1989 Phase II notice, that fact did not eliminate the

requirement of including such a variation in the Phase II agreement which clearly states that all train dispatching functions would be transferred to Jacksonville..." ATDA declined the Carrier's offer to meet further on this issue.

The Train Dispatching Office at Washington, Indiana, was closed February 23, 1990.

ATDA General Chairman Golden, on March 7, 1990, filed the instant claim. Said claim was denied through the grievance process. The ATDA appealed the matter to arbitration under Section 14(c) of the ATDA Protective Agreement. The use of that agreement became a controversial point with the Carrier. The undersigned was appointed by the NMB as the neutral arbitrator thereof.

Position of the Parties

Employees

The Organization contended that the Carrier's May 18, 1989 notice was completely disposed of by the consummation of the August 15, 1989 Agreement. The Agreement speaks for itself. It contained no exceptions, pre-conditions or in any manner referenced the Storrs-Cochran territory or its transfer to a location other than Jacksonville.

The ATDA argued that the Carrier failed to give the required thirty (30) days advance notice as per Section 4(c) of the September 8, 1981 Protection Agreement when it transferred the Storrs-Cochran Jct. territory to the Cincinnati, OH dispatching office on February 23, 1990 and closed the Washington, Indiana office.

Assuming, arguendo, that CSXT representatives gave full detailed specifics as to the modification of the May 18, 1989 Notice concerning the Storrs-Cochran Jct. territory during the June 20, 1989 conference, it nevertheless was incumbent on CSXT to have confirmed such modification in the covering August 15, 1989 Implementing Agreement. ATDA noted that the preamble of said Agreement tracks the preamble to the notice confirming intent, i.e., "to transfer and coordinate train dispatching functions performed in the various Phase II Train Dispatching Offices (which included the Washington, IN office) into the Centralized Train Dispatching Center at Jacksonville, Florida."

The ATDA asserted that it had no formal knowledge of any intent to exclude the Storrs-Cochran Jct. territory from the application of both the May 18, 1989 notice and the August 15, 1989 Agreement.

ATDA argued now that CSXT asserts that the dispatched territory was to be excluded from those functions to be transferred to Jacksonville and absent its failure to confirm such exclusionary intent in the August 15, 1989 Agreement it is therefore obvious that an intent to otherwise permit the transfer to the Cincinnati Dispatching Office would fall under the purview of the September 8, 1981 Protective Agreement. Consequently, any disputes arising thereunder would necessarily come under the respective provisions (Section 14) of said Agreement rather than under Article 1, Section 11 of the New York conditions.

While the instant claim was not presented as a continuing claim, per se, the claim asserts that the protective agreement was violated when CSXT failed to post the required notice before transferring the

disputed territory to the Cincinnati office on February 13, 1990. Therefore, the CSXT has a continuing liability because of the violation occurring then on that date and after. See among others, Third Division Award 25538.

The claim is proper and is not excessive. In essence, the responsibility of the Storrs-Cochran territory was transferred from Dispatchers in the Washington, IN office to Dispatchers in the Cincinnati, OH office. One seniority district was deprived of it and a different district was required to perform work on the territory. The impact on each was without the required and proper notice.

Paragraph (3) represents an appropriate remedy. The Award of PLB 4550 in Case 2 is not a proper precedent particularly in view of the fact that it is under court review.

It is neither necessary nor appropriate to name unidentified claimants when such Claimants are readily ascertainable from the Carrier's records. While avoiding the multiplicity of daily claims and cluttering of the grievance procedure, this method of claim handling has been found by the NRAB to be proper. See Third Division Awards 7569, 4370, 5078, 5187, 3117, 9984, 10059, 10603, 11214 and 11986.

The claim should be sustained.

Carrier Position

The Carrier, among other positions, centered its primary arguments on the Board's jurisdiction. It initially contended that this dispute emanates from a transaction effected pursuant to New York Dock Employee Benefits and Conditions, that this Board has no authority to resolve a matter that clearly accrues to resolution under

Section 11 of New York Dock. Therefore, the Board must dismiss this dispute.

CSXT asserted that it has never been disputed by the ATDA that the closing of Washington, IN Train Dispatching operation was required by ICC mandated New York Dock conditions. As with the Phase I notification, the May 18, 1989 Phase II notification was made pursuant to Article 1 Section 4(a) of New York Dock. The handling and implementing Agreements were also in compliance therewith. Hence, any dispute handling or allegations in connection with that transaction must necessarily be handled, pursued and adjudicated under Section 11 of New York Dock.

It is not unusual for arbitral tribunals to be faced with employee protection disputes over which they have no jurisdiction. This is particularly true where the parties have provided a resolution mechanism and why such disputes are referred thereto. See Third Division Award 27103 and 17988. Also Award 403 of PLB 872, NRAB First Division Award 23426, Second Division Awards 8286 and 10028, among others.

Further, even where the focus of the dispute did not involve the agreement cited by the petitioner, nor for which the Board had been established, awards thereon have been likewise consistent. For instance, NRAB Third Division Award 26255 dismissed a claim progressed by the ATDA and cited similar awards therein. There, as here, the issue raised clearly fell under another agreement that provided a specific mechanism other than the one to which it was presented, for the resolution of disputes.

The ATDA erred here, as it did when they selected the Third Division in Docket TD-29245 as the forum to handle an identical case. There the claim read:

> "(a) CSX Transportation, Inc. ("Carrier") violated the January 9, 1988 implementing agreement between the parties when it failed to transfer and coordinate a portion of the train dispatching functions formerly performed in the Dayton, OH office (responsibility for movements between Middletown and Middletown Jct.) to the Jacksonville Centralized Train Dispatching Office and instead transferred them to the Cincinnati, OH train dispatching office effective February 15, 1989.
>
> (b) Because of said violation, the Carrier shall now compensate each Train Dispatcher in the Cincinnati office who is required to perform any duties in connection with the Middletown-Middletown Jct. territory, one (1) days pay at the rate applicable to Trick Train Dispatchers in the Jacksonville Centralized Train Dispatching office for each such occurrence, in addition to any other compensation received for such claim dates.
>
> (c) Joint check of Carrier's records to determine occurrences, and appropriate claimants. (underscoring added)"

This case should be also dismissed simply for forum shopping.

CSTX argued that without prejudice to the above, the claim has no merit under any provision of the ATDA Schedule Agreement and particularly under the provisions cited by ATDA.

Carrier did serve the NYD required 90 day notice under Section 4.

New York Dock provides the proper mechanism for resolving disputes arising thereunder. Therefore, a Board established under another agreement lacks the jurisdiction to resolve same.

There simply cannot be any foundation for believing that the ICC contemplated a duality of protection and notices by its imposing New York Dock labor protective conditions and ATDA could later select the

September 8, 1981 property Protective Agreement to handle a dispute arising under NYD Agreement.

Even if the claim had merit, which it does not, there are no identifiable claimants presented by ATDA, and the purported remedy sought is punitive and excessive, and it is not provided for under any agreement.

The ATDA must identify the employee to whom any entitled damages may be due. They have failed to do so. It is to be noted the alleged, if any, Washington, IN claimants were provided with New York Dock entitled conditions as a result of the August 29, 1989 Agreement. As to the alleged part (b)(2) claimants, no rule, practice agreement or precedent has been shown to support such claim for an additional day's pay.

The claim should be dismissed or denied.

Findings

Special Board of Adjustment No. 1057 received jurisdiction of this dispute by reason of the parties September 8, 1981 Protective Agreement. However, our Board must initially determine whether this Board has jurisdiction to determine the merits of the cases placed before it.

Here, pursuant to the authority conferred by the ICC and for which said ICC mandated labor protection coverage to entitled employees better known as the New York Dock Conditions, a transaction occurred in mid 1989. A dispute arose shortly after the parties, pursuant to Article 1, Section 4(a) of the New York Dock conditions, had written the August 15, 1989 Implementing Agreement.

A fundamental question formed by the facts and circumstances of said dispute is whether the dispute resolution mechanism (Section 14) of the parties September 8, 1981 Appendix 2 Protective Agreement and under which this SBA was created should govern or whether this dispute should be pursued under the dispute resolution mechanism of the New York Dock Conditions, Section 11.

This Board is impelled by logic, legal and arbitral precedence to find in favor of the latter New York Dock Conditions forum being proper rather than that in the former Property Protective Provision Agreement. Consequently, we must conclude that this Board lacks jurisdiction to consider the merits of the dispute and this Board will therefore dismiss the instant claim without prejudice.

Award: Claim dismissed.

H. E. Mullinax, Employee Member

Brenton C. Massie, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued January 3, 1992.

DISSENTING OPINION OF EMPLOYEE MEMBER

The majority relies on CSXT's May 18, 1989 notice to transfer certain train dispatching functions into the centralized Jacksonville, Florida facility, "including those in the Washington, Indiana Train Dispatching facility." [Award, pp. 2-3]

CSXT contends that ATDA representatives were fully advised as to the scope of this Phase II implementation, particularly as to the fact that in closing the Washington, Indiana Train Dispatching operations, a small amount of dispatching functions involving the transfer of CTC equipment control of the operations at Lawrenceburg and Dearborn, Indiana (Storrs-Cochran Jct.) would be relocated from the Train Dispatching operation at Washington, Indiana to the Train Dispatching operation at Cincinnati, Ohio from which these operations would be performed. ATDA denies that the clarity of that advice was ever transmitted.

With no clarifying advice being offered as to CSXT's specific intentions, neither party suggested a need to incorporate any reference to same in the implementing agreement.

It is undisputed that no notice, under Article I, Section 4 of the New York Dock conditions, was issued or posted by CSXT with respect to its intention to transfer the Storrs-Cochran Jct. territory from the Washington, Indiana office to the Cincinnati, Ohio office.

In the absence of a proper notice under Article I, Section 4, to transfer the Storrs- Cochran Jct. territory to the Cincinnati, OH office, there can be no reasonable basis to resolve any dispute concerning such transfer under the New York Dock conditions.

This Board was established solely under the provisions of the September 8, 1981 Orotective Agreement. It has exceeded its authority by effectively interpreting the New York Dock conditions, to the extent of finding that the resolution of disputes provisions in those conditions is the proper forum.

I must dissent.

H.E. Mullinax, Employee Member

April 6, 1992