

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT: This is a re-submission of the case covered by Award No. 601 in which the Board remanded the matter for the development of further evidence. The details and argument are set forth in Award No. 601 to which reference is made and will not be repeated.

OPINION OF BOARD: The Organization's claim depends largely on the fact that there were at one time fourteen assistant chief dispatcher positions on the respondent carrier's line, whereas there is now but one, and relies on the many decisions of this Board to the effect that work once subjected to an agreement may not be removed therefrom by unilateral action, and although positions may be abolished when the work thereof no longer exists, where work remains it cannot be handed over to others not covered by the agreement. It is asserted that the latter is what has happened in several instances and we are asked to require the restoration of certain abolished positions. Without receding in the slightest from the principles referred to before, the Board finds them extremely difficult of application to the instant case for this reason. The position of assistant chief dispatcher on this carrier is a somewhat anomalous one. There is no certain type of work continually to be performed which can be said to be peculiarly the work of an assistant chief dispatcher. Its function is precisely what its name implies. There is not such a position attendant to each chief dispatcher at all places nor even at all times. The position is created at a particular point when conditions demand its creation and is abolished when those conditions no longer require the office. The case affords striking illustrations of this fact in such situations as heavy work like double tracking or change of line on a division; coal or other car shortages; high volume of traffic coupled with limited passing track and siding facilities. When these conditions occur the work of chief dispatcher increases to the point where he is unable efficiently to care for all the work and responsibilities usually his, and in that case a position of assistant chief dispatcher is created. Among the most important duties of chief dispatcher, particularly in times of car shortage, is car distribution, especially with a view to avoidance of discrimination and consequently legal liability. When an office of assistant chief dispatcher is created the function of car distribution is commonly turned over to him. Perhaps the most important function of a chief dispatcher is handling power. Of course, everybody from a call boy up may in some respects be said to "handle" power, but the original responsibility and judgment exercised with respect to it is by the Chief dispatcher. When he has an assistant, frequently a portion of that work is delegated to him. Other functions of the chief dispatcher are delegated in whole or in part to his assistant in some cases, as for example, the handling of personnel, vacations, leaves of absence, assignment of operators, time-keeping of dispatcher's office. These are

usually duties of the chief dispatcher himself; however, it appears that, here, other duties of a much lower order have also been assigned to assistant chief dispatchers, apparently either to fill out their time, or as a sort of general help-out of the office in busy times. Among these are many routine clerical functions, some of them are incidents of the chief dispatcher's office that he might even perform himself in slack times, but which otherwise are commonly performed by a telegrapher-clerk or clerk, such for example as making up pay-rolls. While the time-keeping itself is highly important the transcribing of it to a pay-roll is clerical routine; so also making up of the mine report. The car distribution is of the highest importance, the reporting of it mere routine.

The evidence shows that some of the foregoing circumstances were present in one or more of each of the instances of the establishment of a position of assistant chief dispatcher. It further indicates that as and when the necessity for the position to be filled no longer existed, the position was abolished and the work theretofore performed by the assistant chief dispatcher returned to whence it came. We are not here concerned with the propriety of the turning over of the clerical work, subject either to the telegraphers' or clerks' agreement, to an assistant chief dispatcher, although it appears quite dubious. The point here made is that the handing of this routine clerical work back to whence it came is in conflict with the principles referred to, i. e., that a position may not be abolished with work remaining turned over to persons outside the agreement. With this contention we cannot agree, since except as clerical work may be incidental to positions covered by the dispatchers' agreement, the scope thereof does not include straight routine clerical work. Nor can we agree with the proposition that the turning back to the chief dispatcher of the work taken from him, (he being of an excepted class not subject to the agreement), constitutes a transgression of those principles. As earlier stated there is no specific particular type of work that can be said to be peculiarly work of an assistant chief dispatcher. On the contrary, his work consists of, when his position is necessary at all, the handling of that excess of the chief dispatcher's work which the latter is unable to perform; thus when this excess disappears the work of assistant chief dispatcher disappears. Though some of the same class of work which he did perform may thereafter continue to be performed by the chief dispatcher, it must be remembered that chief dispatcher work is not subject to the agreement except only as an excess thereof may be assigned to a position of assistant chief dispatcher that may be established. Therefore, it is only an excess of such work which ever becomes subject to the dispatchers' agreement, and when the excess vanishes there is no such work covered by the dispatchers' agreement.

Applying these considerations then to the detailed situation we find this. The claim has now been amended withdrawing the points Paris and Knoxville, and to request the restoration of one position at Middlesboro, the establishment of two at Mobile in lieu of positions formerly at Montgomery and Pensacola, abolished when the functions of those offices were removed to Mobile, and at Ravenna three positions. At Middlesboro it appears that there was in 1917 three assistant chief dispatcher positions, which by 1927 had been reduced to one by the abolition of two, and the remaining assistant chief dispatcher position is still on. The evidence shows that this was a heavy coal loading district and that the car-loadings had dropped off a third since 1927. During the period subsequent to Federal Control up to 1926, there was an extreme car shortage, and it appears that this was the main reason for the establishment of the positions at Middlesboro. The car shortage was overcome and loadings started downwards in 1927. The position at Paris, Kentucky, originally claimed, it appears was put on incident to double tracking, and when that work was finished there was no longer need for the position. The only basis for the claim for three assistant chief dispatchers at Ravenna is that there were three positions named in the wage schedule and that certain routine clerical duties are being performed by others not covered by the agreement, as well as some chief dispatcher work,

i. e., handling power. That term is used in the sense of primary responsibility. This as previously indicated does not establish any violation of the agreement. The rest of the assistant chief dispatchers were relieved at this point August 6, 1930. At that time there were three assistant chief dispatchers. Car supply was only about 90%, but since then there has been a constant surplus and loadings have dropped off over 40%.

At Mobile the situation is somewhat different. As previously indicated, the offices formerly at Pensacola and Montgomery were consolidated with the Mobile office and the assistant chief dispatcher positions at the two former points abolished and none established at Mobile. In the present re-submission the Organization in its Exhibit TD-9 produce a statement from the Chairman located at Mobile which indicates that the handling of power at Pensacola is being handled by operators and trainmaster-clerk. Just what is intended to be meant by "handling" power is not explained. As before pointed out, handling power is a wide term and the only portion of its application which formerly may be said to have belonged to assistant chief dispatchers was that which is ordinarily the function of the chief dispatcher, that is, primary responsibility in that connection. If operators and trainmaster-clerks are assuming that at Pensacola, it is, of course, wrong, but we cannot find in this record that such is the case. It may be all they are doing is the incidental routine of handling power after decisions made by the chief dispatcher such as are usually attendant on their positions.

For the foregoing reasons we discern no violation of the agreement.

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 no violation of the agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1939.