

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "(a) Claim of the Train Dispatchers that action taken by the Management of the Lehigh Valley Railroad Company, in abolishing positions of Assistant Chief Dispatcher (to which class Train Dispatchers' Agreement applies) and creating positions titled 'Movement Directors' (to which titled positions agreement does not apply) at greatly reduced rates of pay and transferring work theretofore performed by Assistant Chief Dispatchers to employees to whom the Train Dispatchers' Agreement does not apply, is in violation of the intent of several provisions of the existing agreement between the parties.

"(b) Claim of the Train Dispatchers that the positions incorrectly titled 'Movement Director' be properly titled Assistant Chief Dispatcher, and that train dispatchers who, by reason of the herein complained of action by Management, have sustained and continue to sustain monetary losses be compensated by Management therefor."

JOINT STATEMENT OF FACTS: "On and prior to June 23, 1934, and subsequent thereto positions properly titled Assistant Chief Dispatcher existed on the Lehigh Valley Railroad as follows: Two at Easton, Pa., two at Wilkes-Barre, Pa., and two at Buffalo, N. Y. The rate of pay of these positions was \$305.00 per month.

"The incumbents of these Assistant Chief Dispatcher positions generally performed some or all of the duties described by the Interstate Commerce Commission in its Order dated July 1, 1921, commonly known as the 'Occupational Classification' as falling under Grade 2—Train Dispatcher Group, reading:

'Assistant Chief Train Dispatcher
Chief Train Dispatcher:

The above classes 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 employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.'

"On or about June 24, 1934, Mr. J. N. Haines, General Manager, Lehigh Valley Railroad Company, and Mr. O. H. Braese, then Vice President of the American Train Dispatchers Association, met in Bethlehem, Pa., and agreed upon a method of procedure to determine whether or not a majority of train dispatchers, including assistant chief dispatchers, on that railroad

Buffalo position alone is properly the subject of this dispute, by reason of the fact that the position of Assistant Chief Dispatcher at Buffalo was the only one on the railroad when the agreement was made.

"In conclusion the carrier submits that the evidence establishes that the positions of Assistant Chief Dispatcher were abolished in good faith because of necessity, and the duties of the position, as classified by the Interstate Commerce Commission were retained within the craft and not transferred as claimed. The complaint is not well founded, is not supported by the evidence and should be dismissed.

"Copies of this submission have been mailed to the complainant."

OPINION OF BOARD: The facts and the contentions of the parties sufficiently appear in the foregoing summary of the docket.

There is no dispute that on December 1, 1938, the remaining position of Assistant Chief Dispatcher at Buffalo, New York, was "abolished," or that the carrier attempted to abolish it despite the agreement of July 1, 1938, and turn over to dispatchers, then and thenceforth called Movement Directors, work (not all, but much of it) formerly done by Assistant Chief Dispatchers. These Movement Directors were to receive \$245.00 per month, whereas the Assistant Chief Dispatchers' pay had been \$305.00 per month.

This attempt was a violation of the agreement of July 1, 1938, and the claim as to that position must be sustained.

The agreement of July 1, 1938, had no retroactive effect. However, there was an earlier agreement of July, 1921, which continued in effect until it was succeeded by, or merged in, the later agreement of July 1, 1938. Therefore, the attempt to "abolish" the other five positions—one in Buffalo, two in Easton, and two in Wilkes-Barre—was a violation of the earlier agreement and was also wrongful and futile. The appearance of that action was not improved by the fact that it was done over protest while negotiations were in progress pursuant to the long-recurring request to have the existing agreement put in written form.

The claim must be sustained as to those five positions also.

This last mentioned but earlier agreement was probably the one referred to by the carrier in the first paragraph of its reply to claimants' oral argument, received July 5, 1939, wherein it says:

"It is true, as is set forth on Page 1 of Employees' Oral Statement that Assistant Chief Dispatcher positions existed on the Lehigh Valley Railroad for many years prior to and at the time a secret ballot was taken on June 23, 1924 (1934) and it is conceded that Assistant Chief Dispatchers were represented thereafter by the American Train Dispatchers' Association as a result of that election."

Standing alone this admission is sufficient and controlling, but it does not stand alone. On Page two of its supplemental submission of June 6, 1939, carrier says:

"The first conference in connection with the adoption of the new agreement was held on May 27, 1938, and the Committee submitted a proposed scope rule which included Chief Dispatchers and Assistant Chief Dispatchers." (Bold type ours.)

In the written argument submitted November 30, 1939, the last paragraph on page one opens:

"The existing agreement covering train dispatchers on the Lehigh Valley went into effect July 1, 1938. Prior to that date, there was no written agreement covering train dispatchers in effect on this carrier." (Bold type ours.)

There is no question of the right of the carrier to abolish positions when there is no longer work to be done. Here it is very clear that there was work to be done. This is shown in a number of parts of the record, among them Chief Dispatcher Miles' letter of June 13, 1938, to the second and third trick dispatchers, (Ex. TD-1) as follows:

"EXHIBIT TD-1

EXHIBIT TD-1

C O P Y

LEHIGH VALLEY RAILROAD COMPANY

Easton, Pa., June 13, 1938

Mr. E. H. Bennett
Mr. F. O. Henry
Mr. G. N. Kocher
Mr. G. S. Henry
Mr. W. V. Boyle
Mr. L. T. Keiper

Effective Thursday June 16th, the 2nd and 3rd trick dispatchers will handle all the power, train arrangements, and the proper handling of cars, taking care of the proper method of handling symbol trains on this Division, the turning of power at Oak Island, and any other terminal with crews away from home.

* * * * *

Anything arising during the 24-hour period that is not thoroughly understood, you will arrange to call me, and in addition to notifying the Trainmaster and all concerned when derailments occur, I also desire to be notified of same, particularly main line derailments. At any time I am away from home any length of time the office will know how to reach me.

(Signed) H. C. MILES
Chief Dispatcher."

That this work was later done by employes other than in the Train Dispatcher class is shown by the later and significant letter of Chief Dispatcher Miles, dated November 30, 1938, (Ex. TD-3), which reads as follows:

"Exhibit TD-3

Easton, Pa.
November 30, 1938.

Mr. Bennett.
Mr. Henry.
Mr. Kocher.
Mr. Henry.
Mr. Boyle.
Mr. Keiper.
Mr. Minchin.

Effective Thursday, Dec. 1, 1938, the position of Clerk Telegrapher in the Chief Dispatcher's office at Easton will be discontinued and new position viz—MOVEMENT DIRECTOR, will be established.

Rate of pay \$245.00 per month, one relief day each week.

Duties—handling power, movement of cars both passenger and freight, and any duties incident to the office.

The following have been appointed Movement Directors:

First trickW. V. Boyle
Second trick.....G. S. Henry
Third trickG. H. Minchin

Relief Train Dispatcher—L. T. Keiper, who will work the Train Dispatcher and Movement Director reliefs.

Signed/ H. C. Miles
Chief Dispatcher."

These exhibits tend to show that the Movement Directors were doing and were required to do much of the work of the Assistant Chief Dispatchers with reference to the movement of trains, distribution of cars and power and other duties of a supervisory character.

In a number of other places the record shows that the Movement Directors were doing that kind of work and exercising authority. For example, on page 86 of the Docket, it is shown that L. T. Keiper, of whom it was said in Ex. TD-3, "Relief Train Dispatcher—L. T. Keiper, who will work the Train Dispatcher and Movement Director reliefs, . . ." worked as Movement Director on June 11, 1939, and addressed a "transfer" to "GSH" and "FCH," Movement Directors, setting forth the instructions executed and the arrangements made by him, Movement Director Keiper, as follows:

"LEHIGH VALLEY RAILROAD COMPANY
QD, 6/11/39 3:00 P. M.
GSH
FCH

Have told P.R.R, Special east should reach NK about 6:45 P. M. This crew returns with equipment to Easton. Note diner handling.

Have arranged with Cougle and yard to head engine 3450 east, set same on westbound Extension. Have engine arriving here with deadhead equipment move this engine NG to HQ (20 miles per hour) calling a msgr.

Engine 2032 on No. 32 through. Leave engine at XC.

No. 39 gets diner 1012 and bunk 500 here, Deadhead Pullman McArthur at Bethlehem.

No. 11—1 extra sleeper Ithaca, and 1 Buffalo, from New York, engine 5127 on NE-2 for No. 11.

Extra Drill at SP today now on way to MV to move the few eastbounds from XG, including car whiskey for PA; can place the couple XC cars with 28XC coal now at SP, which can probably be picked up with the HJ-2 crew to-night.

Engine 431 should be on the Lehigh (due for wash) to change for engine 478 So. Easton.

Engine 3180 NG to A when ready. 3194 A to NG.

Foreman Kosick PA will call later, have car cement at NS drilled out—hot journal. Figured on having same repaired for movement, destination GY-2 tonight. Car destined to Valentines.

Told Fagan hold CQ cars for HJ-2s crew and the NPenn and Bethm proper and any left over BS for GY-2. 65 PA and 51 XC at PD.

Extra 432 gets 50 Wbd at Q and cleans up Calypso.

Extra light to SP, leaves XC: KJ-2s crew Hartley rested 5:27 P. M. SJ-4s crew Eisenbach rested 5:30 P. M.

L. T. K."

A memorandum by Train Dispatcher D. L. Gafner on January 27, 1939, reads in part:

"Every day, in one way or another, the 'Movement Directors' are doing exactly as a chief (or assistant chief) dispatcher would do, i. e.,

giving you instructions how to handle your trains. This P. M., for example, Extra 455 East, Conductor Warren, Engineer Myers, advised at Stafford that they would not have coal enough to take their train any farther than Rochester Junction. Engine 445, Engineer Hobbs, coupled in with JS-1 account turning power, was instructed by the Train Dispatcher to cut off at Rochester Junction and assist Extra 455 into Manchester. 'Movement Director' came into the office and said, 'Don't do that. Let this engine go through to SBridge with JS-1. I have arranged to have hostler at Manchester take engine up to the west end of yard; let Engineer Myers go as far as he can then cut off his engine and go to Manchester for another engine.' The train dispatcher then changed his instructions to these two crews to conform with 'Movement Directors' instructions."

The Interstate Commerce Commission's Occupational Classification Order of July 1, 1921, included:

**"GRADE 2—TRAIN DISPATCHER GROUP
SYMBOL (NDP-2)**

Distinctive Classes of Positions:	Symbol
ASSISTANT CHIEF TRAIN DISPATCHER	NDP-21
CHIEF TRAIN DISPATCHER	NDP-22

Description of Classes:

The above classes 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 employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work. . . ."

The very title has significance in the premises. Movement Directors of what? Traffic and trains. Directors of movements of trains, distribution of cars, handling of power and so forth. It would seem that the chief, if not the only, differences between Movement Directors and Assistant Dispatchers is in the title and the amount of pay.

It is true the Movement Directors do some incidental clerical work, but so did the Assistant Chief Dispatchers. On the whole record, the claims must be sustained.

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 employees involved in this dispute are respectively carrier and employees 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 actions of the carrier in abolishing the positions of assistant chief dispatchers, turning the work over to employees not covered by the agreement, then later re-creating the positions under a different title at a lower rate of pay was a violation of the agreement.

AWARD

Claim (a) sustained. Claim (b) sustained.

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

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of January, 1940.