

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE DETROIT AND TOLEDO SHORE LINE
RAILROAD COMPANY

STATEMENT OF CLAIM:

- A. Request that Train Dispatchers at Dearoad, Michigan, be relieved of all work except actual duties incident to train dispatching as set forth in Interstate Commerce Commission regulations.
- B. Claim of all Train Dispatchers commencing November 6, 1936, and all subsequent dates for a minimum day at yardmaster rates in addition to regular rate as Train Dispatcher until relieved of this additional work.

EMPLOYES' STATEMENT OF FACTS: Prior to November 6, 1936, certain work as yardmaster at Dearoad, Michigan, had been performed by a regularly employed yardmaster, and the Train Dispatchers at that point were not, in addition to being "... 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" (quotation from page 268, "Occupational Classification") required to "supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching..." (quotation from page 249, "Occupational Classification").

Under date of November 6, 1936, the Carrier's then Trainmaster J. E. Weeks addressed a notice to Chief Train Dispatcher F. M. Guilford, reading as follows:

"It has recently been arranged that Yardmaster Walters will have regular assigned hours at Dearoad, and they will be 9:00 P. M. until 5:30 A. M. until further notice. This defines the breaking off and beginning points between the duties of a dispatcher as acting yardmaster and that of regular yardmaster."

In compliance with these quoted instructions, the train dispatchers performed work of train dispatcher as well as of yardmaster.

The train dispatchers complained to the Carrier against being required to perform work in two separate and distinct classifications. Complaint was finally made in writing on January 19, 1944, as a result of which Superintendent E. O. Dunn addressed a letter dated January 22, 1944, to the then Chief Train Dispatcher, H. Neff, reading as follows:

OPINION OF BOARD: In the Scope Rule of the Agreement it is provided that "the rules of this agreement shall govern the rates of pay and working conditions of any person who performs service as train dispatcher as that term is defined by the Interstate Commerce Commission."

While it is stated in the preface of the Interstate Commerce Commission Classification that it is not to be construed as setting up jurisdictional lines for occupation, there is nothing to prevent the parties from making a part of the Scope Rule of the Contract the definition and classification of the Commission. The parties have done just that in this case.

A Train Dispatcher is described in the Interstate Commerce Commission Classification as follows:

"Train Dispatcher Group

"Distinctive class of position:

"TRAIN DISPATCHER

"Description of class:

"The above 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."

A Yardmaster is described as follows:

"Yardmaster Group

"Distinctive class of position:

"YARDMASTER

"Description of class:

"The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district or a large railroad yard; and to perform related work."

Have the Claimants proven in this case that the Dispatchers were required to do Yardmaster's work in violation of the Agreement as the work is thus described in the above classification? The proof is general and indefinite. While affidavits were submitted by some Dispatchers indicating that Yardmaster's work was done by the Dispatchers, we do not believe the proof is definite enough to sustain claim upon this record.

Complaint was made by employees in writing on January 19, 1944, following which Carrier's Superintendent addressed the following letter dated January 22, 1944, to the Chief Train Dispatcher at Dearoad:

"Your note of January 19th attaching letter from Train Dispatcher Bond referring to instructions issued by former Trainmaster Weeks under date of November 6, 1936, to the effect that **train dispatchers would perform the duties of yardmaster** in the absence of the yardmaster, these instructions are cancelled. It is expected that the **train dispatchers will continue** necessary supervision but they will not be required to actually perform yardmaster's duties." (Emphasis ours)

We believe the claims in any event must be limited to that date. On the record before us we do not feel an award would be justified covering any period prior thereto.

We conclude that from January 19, 1944, Carrier has violated the Agreement in requiring Dispatchers to do Yardmaster's work and that claims

should be sent back to the property to adjust and settle the amount of the claims from that date.

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 since January 19, 1944, Carrier has violated the Agreement in requiring Dispatchers to do Yardmaster's work.

AWARD

That claims be sent back to property to adjust and settle the exact amount of claims, from January 19, 1944, to date, for G. B. Bond, C. C. Hargis, H. Neff and G. A. Peck.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3136

DOCKET TD-3171

**NAME OF ORGANIZATION: American Train Dispatchers
Association**

**NAME OF CARRIER: The Detroit and Toledo Shore Line
Railroad Company**

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In this award the Board found that from January 19, 1944, Carrier violated the Agreement in requiring Dispatchers to do Yardmaster's work and that claims should be sent back to the property to adjust and settle the amount of the claims from that date. In sending the claims back to the property it was merely intended that a computation be made of the number of days pay at Yardmaster rate that was due each Claimant according to the number of days such service was performed since January 19, 1944.

In effect what Carrier now seeks is a rehearing on the merits and the setting aside of the award because of lack of proof by Claimants. It was not intended by the award that there should be further proof of violations of the Agreement, but merely that a computation should be made to determine how much was due each Claimant.

The Interpretation requested by Claimants is sustained.

Referee Luther W. Youngdahl, who sat with the Division as a Member when Award No. 3136 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 4th day of October, 1946.

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