

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of E. L. Lawrence, et al., extra train dispatchers employed by The Virginian Railway Company that:

(a) The application of special instructions contained in the said Virginian Railway Company's Time Table, paragraph No. 13, effective on the New River Division of that carrier, violates Article 1, Sections (a), (b), and (c) of the effective agreement between the carrier and its train dispatchers, and

(b) That the Virginian Railway Company be required to compensate said E. L. Lawrence, or the senior available extra train dispatcher on the New River Division, a minimum day's pay at the trick train dispatcher's rate for July 1, 1947, and for each and every day subsequent thereto on which a train movement has been effected on the White Oak Branch on the New River Division of this carrier under the primary supervision of any person other than one who is covered by Article 1, Sections (a), (b), and (c) of the said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement, effective November 1, 1943, between the Virginian Railway Company and its train dispatchers represented by the American Train Dispatchers Association governing rates of pay, hours of service and working conditions, copy of which is on file with this Board, is hereby made a part of this submission as though fully incorporated herein.

The rules of said agreement, pertinent to the instant dispute, are as follows:

"ARTICLE 1.

SCOPE:

(a) The term "Train Dispatcher" as herein used shall be understood to include trick, relief and extra dispatchers.

(b) The term trick, relief and extra dispatchers shall include positions in which it is the duty of incumbents 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.

case on July 1, 1947. The conductor certainly performs no service that any other conductor does not regularly perform in the course of the day's work. The assistant trainmaster instructs the train crew as to its daily work, the same as any other trainmaster or assistant trainmaster does with crews under his jurisdiction, but he is not responsible for the movement of the train "by train orders or otherwise." Since only one crew is involved it is absurd to contend that the movement of the crew needs the supervision of a dispatcher. Nothing the dispatcher could do would have any practical effect on the work of the crew. Thus, on days when only one crew is on the branch it is inconceivable that any dispatching service is necessary (other than above noted record of crew on duty, which is kept by dispatcher).

Now as to days when a crew other than the regular crew operates over the branch. Such a circumstance occurred only seven times during 1947. In the instant case, on July 1, 1947, it has been shown that a dispatcher issued the necessary written instructions for the train movement in question. Representatives of employes in discussing the case, however, contended that on these infrequent occasions when another crew did operate over the branch by securing permission of the mine run conductor, somebody performed work of a dispatcher. If any written instructions were issued they were issued by a dispatcher. As for the claim that it is necessary for a dispatcher to intervene in arrangements between two crews for relative movement of their trains, such contention entirely overlooks the fact that performance of work in that manner is a regular part of every day operation, particularly in branch line service. For example, trains are every day moved under flag protection without supervision of a dispatcher. Crews regularly arrange with other crews in charge of work trains, locals, and mine runs, for relative movement of their trains. There is thus nothing unusual in the requirement of Special Instruction No. 13 that a crew other than the mine run crew secure permission of the mine run conductor before making a move on the branch. As shown above, such arrangement has been in effect on this branch ever since the branch was taken over in 1912.

There might be inference that dispatchers have been superseded in this instance. This is not the case. For many years six dispatchers handled the dispatching work of the entire New River Division. When centralized traffic control was installed between Elmore Terminal and DB Tower an additional set of three dispatchers was added so that nine dispatchers are now in service on the division instead of six. It is thus clear that the revision of Special Instruction No. 13 in August 1942 to include the entire White Oak Branch was in no way involved in any reduction in dispatching service.

In summary of its case the Carrier wishes to point out:

1. On date of claim in this case only one train movement was made on White Oak Branch and written instructions for the move were issued by the proper train dispatcher.
2. White Oak Branch is not operated under train orders, but under Special Instruction No. 13 of the Time Table.
3. The only record of train movement maintained is name of engineer and conductor and time reporting and relieved, which record is maintained by the dispatcher at Mullens.
4. Only one train is normally operated on the branch; during the year 1947 other crews made moves to and from the branch on seven occasions, including the case of July 1, 1947.
5. No service of a dispatcher is normally required for operation of White Oak Branch (other than Item 3 above) and when such service is required, as on July 1, 1947, a train dispatcher performs the service.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is presented in a triple aspect. The first,—(a)—attacks paragraph No. 13 of the Carrier's time table, designated

therein as Special Instruction No. 13, and promulgated prior to the execution of the controlling Agreement herein, as violative of said Agreement; second, --(b)—a claim for pay for one day's work, July 1, 1947, when, it is contended, Claimant should have been called for train dispatcher's work on the Carrier's New River Division, when Special Instruction No. 13 was not being applied; and third, and in—(b)—for pay for all days train dispatcher's work was performed on the Carrier's White Oak Branch, on said Division, some eight miles in length, by or under the supervision of any person not covered by sections (a), (b) and (c) of Article 1 of the Agreement, effective November 1, 1943, which sections read:

"(a) The term 'Train Dispatcher' as herein used shall be understood to include trick, relief and extra dispatchers.

(b) The term trick, relief and extra dispatchers shall include positions in which it is the duty of the incumbents 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.

An employe directing traffic by centralized traffic control or any other similar agency is to be classified as a train dispatcher.

CLASSIFICATION:

(c) Where pay-roll classification does not conform to section (b) of this article any employe performing service as specified therein shall be classified in accordance therewith."

Special Instruction No. 13, above referred to, reads as follows:

"The White Oak Branch between Carlisle and Lochgelly and between Oak Hill Junction and Oak Hill is operated over by the mine run engine without train orders. Trains will not use this track without first securing permission of the conductor in charge of the mine run."

A Train Dispatcher's office is maintained by the Carrier at Mullens, West Virginia, on its New River Division and, geographically, its jurisdiction covers the territory in which the White Oak Branch is located; and but for Special Instruction No. 13, all dispatcher action on that branch would emanate from the Mullens office. In practice, however, the only control over said Branch, ordinarily exercised by the Mullens office, is to control the movement of trains on the main line into said Branch, and from said Branch to the main line, and it appears that this limited control was continuously exercised. Operations on the Branch were controlled under Special Instruction No. 13.

On January 6, 1947, the General Chairman on the New River Division wrote the Carrier's Superintendent on said Division, at Princeton, West Virginia, requesting that the operation of trains on White Oak Branch, and two other branches, the first named being then operated under Special Instruction No. 13, be arranged so as to conform with the provisions of the Agreement; that is, that they be brought under the supervision of Train Dispatchers, contending that a failure to do so would constitute a violation of the controlling agreement. Considerable correspondence followed, the result of which was that the request was denied by the Carrier's Assistant to President, on February 27, 1947. On March 14, 1947, the Carrier was put on notice, by the General Chairman, that should a monetary claim arise from the alleged violation of the Agreement, the same would be presented and prosecuted.

On July 1, 1947, there were no train operations on White Oak Branch on account of coal miners being on vacation. On that day it was necessary that the engine being used on that branch be sent to a shop for inspection, and Assistant Trainmaster Baker, who was in charge of the operation of said Branch, notified the train dispatcher's office in Mullens, of that situation, and directed him to arrange for the movement of the engine to be in-

spected, and its replacement by another engine, and in accordance with such direction, the following order was issued from the train dispatcher's office in Mullens:

"Oak Hill, W. Va., July 1, 1947.

Engineer Fanning, Engine 479:—
Gulf Junction.

Account no crew working on the White Oak Branch today, July 1st, this message will be your authority to bring engine 479 Oak Hill Jct. to Oak Hill and exchange for engine 467.

J. C. Baker
Asst. Trainmaster."

Carrier's operation rules require that train orders be issued by Train Dispatchers in the name of its Superintendent, but the irregularity in the issuance of the above order was in no way prejudicial to the Claimant, inasmuch as the order was actually issued by a Train Dispatcher, working under the Agreement.

The first question to be decided is whether the operation of trains on the White Oak Branch, under Special Instruction No. 13, violates the Agreement. In our opinion, it does not. Just when this Special Instruction was issued does not clearly appear, but Petitioner admits it was issued prior to the effective date of the present and only Agreement between the parties, and the record shows that the practice authorized thereby has been followed on that Branch since 1912. It is not probable that the Petitioner was unaware of this practice when the current Agreement was negotiated, and if the practice was considered unsatisfactory, then was the time to correct it. Generally speaking, where doubt exists as to the time, intent and meaning of a contract, it will be construed in the light of the circumstances and conditions existing at the date of its execution; and we think it should be held that the current Agreement was negotiated and executed in the light of the then operating practices on the Carrier's lines. To uphold this claim would, in the circumstances, encroach too far upon the right of the Carrier to operate its property efficiently and economically, without any corresponding benefit to employees covered by the Agreement. If Train Dispatchers were assigned the work they contend for on White Oak Branch, it would, we assume, be performed from the Mullens office. On the whole, the situation here is one where the managerial prerogatives seem to have been exercised in a commonsense manner, and we see nothing in Special Instruction No. 13 which calls for interference on the part of this Board. All this is aside from our view that any modification of the present situation should be negotiated between the parties.

When we come to the monetary claim involved, we can see no basis for an affirmative Award. It is quite apparent that White Oak Branch depends on coal mining for its traffic, and when mines are closed, as they sometimes are for long periods, the operating crew on that Branch does not work. Certainly, neither the Agreement, nor Special Instruction No. 13, contemplated that when the mine engine crew was not working, the Branch should be closed. Subject to Special Instruction No. 13, the dispatcher's office at Mullens must, in the very nature of things, have had control over the Branch. Surely it was never contemplated that there would be periods when no one would have control; and if this be true, then who but the Train Dispatcher at Mullens could have taken control. It is argued by the Petitioner that the Train Dispatcher at Mullens had no right to issue the order of July 1, 1947, because of Special Instruction No. 13. If he had no such right, what right would an extra man, the Claimant in this case, have had to issue the order. What gives an extra man rights which the regular occupants of a position does not possess. If Claimant had been called on July 1, 1947, he would have worked out of Mullens, and performed exactly the same function as the Dispatcher on duty at that point, on that day, performed, and would not have been entitled to exercise any authority which the regular Dispatcher, then

on duty, could not have exercised. We think, therefore, that the question of the lack of authority on the part of the Mullens Dispatcher, if sustained, would serve to destroy any claim on the part of the Claimant to perform the same work. This furnishes another reason why the whole matter should be settled by negotiation and agreement between the parties.

Petitioner attacks Special Instruction No. 13, long in existence before the Agreement was in existence, as violating its Agreement, effective November 1, 1947, but in its submission and in argument contend that the existence of said Special Instruction serves to deprive the Mullens dispatcher officer of authority to issue train orders on the White Oak Branch. Special Instruction No. 13 is either valid or invalid. We hold it to be valid. But if we should hold it invalid, then dispatcher's work would, we think, naturally fall to the regularly established train dispatcher's office at Mullens; and so long as regularly assigned Dispatchers worked in that office, there would be no need to call an extra man for service. In any aspect of the case, we do not believe there has been a violation of the Agreement, and, therefore, the claim will be denied.

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 there has been no violation of the Agreement.

AWARD

Claim (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.