

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, 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 Train Dispatchers M. M. Meadows, J. W. Fry, G. B. Thompson, G. F. Coburn, R. F. Cook and A. R. Perry that:

The Virginian Railway Company now compensate the said Train Dispatchers M. M. Meadows, J. W. Fry, G. B. Thompson, G. F. Coburn, R. F. Cook and A. R. Perry for a minimum day's pay as telegrapher, at rate applicable to positions at Gulf Junction, in addition to compensation earned as train dispatcher, for each day on which they performed service as telegrapher and train dispatcher from March 19, 1948 until April 14, 1948, both dates inclusive.

EMPLOYEES' 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 the rates of pay, hours of service and working conditions, copy of which is on file with this Board is, by this reference, made a part of this submission as though fully incorporated herein. The scope rule of said Agreement, pertinent to the instant dispute, reads as follows:

"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.

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

Train movements on that portion of the main line of The Virginian Railway between Elmore Terminal and DB Tower, a distance of 60.3 miles, are directed by train dispatchers located at Mullens, who operate a Centralized Traffic Control machine at that point, the train movements being authorized by signal indication.

Previous to 4:00 P.M., March 20, 1948, The Virginian Railway Company maintained a train order office at Gulf Junction, located between Elmore Terminal and Mullens, 1.8 miles from Elmore and .2 mile from Mullens. Employees of the telegraph department located at Gulf Jct. normally copied and delivered train orders and clearances to trains passing that point.

telegraphers, who ordinarily handle train orders, have, in their schedule agreement, made specific provision under which train dispatchers as such may handle train orders. Thus the instant claim is not valid either under the telegraphers' schedule, under which it is prosecuted, nor under the dispatchers' schedule, under which claimants have already been paid.

Reference was made by representatives of employes to Award 3136 of your Board in which a dispatcher made claim for payment for service performed as a yardmaster. In that case, however, it does not appear that the yardmasters agreed that dispatchers might perform certain work ordinarily performed by yardmasters. In the instant case the telegraphers have agreed that certain of their work (handling train orders) may be performed by train dispatchers as such, as well as by telegraph operators, and therefore there has been no encroachment by one class or craft of work ordinarily performed by another class or craft as was the case in Award 3136. The two cases are thus not similar.

The carrier believes that in answer to the claim in the present case it has made it clear:

1. The claim is not presented under the dispatchers' schedule and would not be valid if made under that schedule.
2. The claim, which is for a day as a telegraph operator, is not valid under the telegraphers' schedule because that schedule specifically provides that train dispatchers as such may handle train orders.
3. Since train dispatchers have always handled train orders when required, the claim is without any foundation in past practice.

Exhibits not reproduced.

OPINION OF BOARD: The business of this Carrier consists almost entirely of transportation of coal. When coal mines along its line are closed, by reason of strikes or otherwise, loss in volume affects many of its services. The claim before us arises out of the closing of an office at Gulf Junction where, during normal operations, train orders are received and delivered by telegraphers to train crews, and the transfer of some of this work to dispatchers at another point within the terminal area. When the mines resumed operations the office at Gulf Junction was restored to its former function.

Claimants do not maintain that they performed all of the duties previously performed by the telegraphers; they do insist they performed some of them. Specifically they insist they received train orders from dispatchers at Princeton, West Virginia, and delivered them to train crews. This, they maintain, is what the telegraphers at Gulf Junction would have done had that office not been closed and what the telegraphers did do after it was reopened. They insist this is telegraphers' work; not work that dispatchers may be required to do under their Scope Rule. In addition they kept certain records and filled out certain forms in connection with these train orders ordinarily processed by telegraphers when they are on duty.

The Carrier maintains that the duties complained of belong properly to dispatchers under a provision in the Telegraphers' Agreement, Article 23, which reads, "The handling of train orders by dispatchers shall not be considered a violation of this rule." This Agreement, effective September 1, 1945, supersedes one of October 1, 1924. The Dispatchers' Agreement carries an effective date of November 1, 1943.

Can the American Train Dispatchers Association be bound, in its dealings with this Carrier, by an agreement made by the Carrier with The Order of Railroad Telegraphers? Can the Telegraphers extend, expand, contract or otherwise modify the Scope Rule or any other rule of the Dispatchers' Agreement? We think not. However free the Telegraphers may be to make such concessions in their own Agreement as they wish it is a well understood

rule of law that they cannot bind others not parties to the Agreement. These Agreements are not interchangeable; each presumably is made for its own craft. Award No. 2371.

Confusion on this point appears to arise out of the fact that many dispatchers were telegraphers and still retain seniority rights as telegraphers. Each agreement, however, has its own Scope rule.

It is further contended by and for the Carrier that even if it be admitted that some of the work claimants were required to do, during the period the Gulf Junction office was closed, was performed by telegraphers in normal times, the dispatchers are now estopped from claiming compensation because they had done it on previous occasions. Several awards are cited in support of this thesis. We have examined all of them. Almost without exception they relate to practices established and accepted without protest over a very long period of time. They are persuasive for the facts on which they rest. As we list these awards we place in parentheses after each the period of time referred to in the record during which each of the practices in question there existed. In some cases agreements were renegotiated from two to four times without reference to the practice complained of.

Among them we find Awards Nos. 1435 (40 years), 2436 (25 to 40 years and 15 years after Agreement was renegotiated), 3338 (25 years), 4086 ("over long period of years"), 4050 (22 years), 4849 (50 years), 4493 ("many years"), 1609 (19 years), 2466 (20 years), 3603 (32 years), 3727 (40 years), 4104 ("dispatcher issued orders direct to conductor prior to 1909," more than 35 years). Only Award No. 3300, among those cited, seems to be an exception to these admittedly historical precedents.

We think the instant case does not come under the "hoary with age" category. Whether or not the dispatchers protested the assignment on a previous occasion, and they bring no positive proof that they did, or whether the Carrier recalled the telegraphers as a result of such protest or from other motives is not of sufficient consequence of itself to deny the claim. If it is to be denied it must be on other grounds. In Award No. 4528 we said "this Division has often held that even long continued acquiescence in practice by the parties on the property does not operate to alter or change a rule of an Agreement that is clear and unambiguous." Also Award No. 2169.

What other grounds are claimed for rejection? The Carrier says the claim must be prosecuted under the Telegraphers' Agreement. This argument seems to us to have been disposed of in Awards Nos. 2371, 3489, 4516, 4454, and 4528. In Award 3489 we said, "It is fundamental that one must rely upon his own agreement in support of a claim based on a contract violation. * * * When an employe is directed to perform service within the scope of another agreement he is entitled to compensation at the rate of such position."

We conclude that that award is on all fours with the instant case with respect to claim for compensation.

The Carrier says "the only part of the work of the telegraph operators which dispatchers assumed was the handling of train orders." It is not necessary that claimants show that they performed all of the duties the telegraphers would have performed if they had been on duty. If they perform some of such duties the rule applies, Awards Nos. 2169, 2708.

If the record were clear as to precisely how much and at what hours claimant dispatchers did the work that telegraphers would have done, had they been on duty, we would have been disposed to give consideration to the application of the "Call" rule as Carrier has suggested. We have no such precise record. We know that there were two passenger trains a day, Nos. 3 and 4. We know other trains operated intermittently. We do not know which of them required "train order service" or how often. We know these dispatchers got orders from dispatchers at Princeton, West Virginia, that telegraphers would have got in the normal course of their work if they had

been on duty. Under the circumstances we resolve that point by relying on the settled rule referred to in Award No. 9601, First Division,

"When we come to search for a proper standard of pay, there being no Agreement provision to which we may resort, we are driven to a reliance on the settled rule, applying to all lines of Carrier employment that when an employee is required to perform work outside of his assignment, and there is no controlling rule governing pay therefor, he is entitled to a day's pay, however limited the time employed, at the rate applicable to the additional work he performs."

We conclude on the whole record that claimant dispatchers did perform, outside the Scope Rule of their Agreement, some of the services normally performed by telegraphers for which they have a right to be compensated at the applicable Telegraphers' rate.

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 dispatchers were required to perform telegraphers' duties in violation of Dispatchers' Agreement.

AWARD

Claim sustained for each of the days on which any of the claimants performed any "train order" or other service normally belonging to telegraphers.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tunmon
Acting Secretary

Dated at Chicago, Illinois this 18th day of November, 1949.

Dissent to Award 4635, Docket TD-4550

The primary duty of a train dispatcher is to handle train orders. No provision of the Dispatchers' Agreement prohibits the handling involved in this dispute.

This is confirmed by citation in the Opinion of a rule in the Telegraphers' Agreement which, though controlling only as to that Agreement, constituted though controlling only as to that Agreement, constituted it as being excepted as being acceptable evidence justifying as proper the performance of the involved work by the train dispatchers, rather than as a base for its disregard on an assumed consideration of the non-binding effect of such rule in the Telegraphers' Agreement upon others not parties thereto. Thus discarding such persuasive evidence, the award proceeds to improper decision and penalty upon the Carrier.

/s/ C. P. Dugan
/s/ C. C. Cook
/s/ A. H. Jones
/s/ J. E. Kemp
/s/ R. H. Allison