

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) Action on part of the Kentucky & Indiana Terminal Railroad Company was improper and contrary to the intent of agreed upon rules, particularly Article 1 (a) and (b) of the current agreement when on August 21, 22, 23, 24 and 25, 1950, work wholly embraced within the Train Dispatchers' Agreement was denied to train dispatchers C. C. Fears, Nova Corbett, T. J. Wright, J. C. Clayton and W. E. Murta, and permitted such work to be performed by employees of other railroads who are not subject to the Train Dispatchers' Agreement.

(b) The Kentucky & Indiana Terminal Railroad Company shall now compensate said C. C. Fears, Nova Corbett, T. J. Wright, J. C. Clayton and W. E. Murta for one day's pay at the regular rate of their positions for each and every day on which employees not subject to the Agreement were permitted to perform work embraced within the scope and provisions of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement on rules governing hours of service, working conditions and rates of pay of train dispatchers, between the parties to this dispute was in effect at the time this dispute arose. A copy thereof is on file with this Board and is, by this reference made a part of this submission as though fully incorporated herein. The scope of said agreement and the rules pertinent to the instant dispute read as follows:

"Rule 1 (a) Scope—(Effective September 1, 1944)

"These rules govern the hours of service, working conditions and rates of pay of Train Dispatchers. The term 'Train Dispatchers' as used herein shall include trick, relief and extra dispatchers."

"Rule 1 (b)—Definition of Trick Train Dispatchers' Positions:

"This class includes positions the duties of incumbents of which 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."

on August 24th at 11:41 a.m. and Engine 6543 at 11:56 a.m. on August 25th."

Our investigation revealed that Southern operator Stubblefield, Ade Tower, displayed without authority a yellow signal only on August 21st for Southern yard engine 6543. Operator Stubblefield's statement to that effect, Carrier's Exhibit G, and Station Records of Train Movements for August 21-25, inclusive, Carrier's Exhibit H, substantiating those facts. That the train and engine movements on August 22-25, inclusive, operated solely under flag protection of the tenant line train crew is revealed on pp 2, 3, 4, and 5 of Carrier's Exhibit H.

With respect to that portion of the Organization's statement on November 27th, Carrier's Exhibit I, reading:

"CI&L No 6s train entered Block "B" at North Wye proceeded to CI&L Passenger Station at Market Street New Albany and returned to Vernia on time on August 21st, 22nd, 23rd, 24th and 25th. CI&L No 5 entered Block "B" at Vernia proceeded to Passenger Station at Market Street and returned to North Wye on time, on August 21st, 22nd, 23rd, 24th and 25th. There was also numerous Yard Engine moves in this block of which there is no written record."

This statement is apt to be misleading. On August 21st, K&I dispatcher jobs had not been abolished as of the hour that Monon No. 6 moved northbound. On August 22nd, or until 2:00 p.m. that date, at which time the telegraphers declined to cross the Trainmen's picket line, Monon trains were governed by signals controlled from a panel which operation was performed by the K&I operator at VI Tower. Thereafter, or until the strike ended, Monon crews moved under flag protection of the Monon train crews.

Aside from the fact that there is neither rule nor practice to support the Organization's contention that K&I dispatchers should have been held on duty to perform hand flagging of tenant line trains, such an arrangement is physically impracticable. The K&I dispatchers' office, as shown in Carrier's Exhibit A, is located on the Louisville side of the Ohio River, whereas the area in which hand flagging by tenant line train crews took place is in New Albany, Indiana.

If, as the Organization alleges, tenant line employees performed work which should have been performed by K&I dispatchers, then, it should follow that the tenant line employees performed work which they were not entitled to perform. The work cannot belong to both. Though of not conclusive evidence that the tenant line crews performed no work over which K&I dispatchers have jurisdiction, of evidentiary value is the fact that neither the tenant line train and engine service crews or any other group of tenant line employees filed claims for performing service which should have been performed by K&I dispatchers (pp 1, 2, and 3 of Carrier's Exhibit J).

(Exhibits not reproduced.)

OPINION OF BOARD: On August 15, 1950 the Carrier was notified that, effective at 6:00 A.M. August 21st, the yardmen, represented by the Brotherhood of Railroad Trainmen, would withdraw from its service. The Carrier made plans to cease operations and abolished the positions held by Claimants. The yardmen returned to service at 6:00 A.M. August 26th and operations resumed. During that period no trains were operated on Carrier's tracks but some trains were operated by the B. & O., the Monon and the Southern Railroads over portions of their own tracks, which movements are normally governed by signals controlled by a K. & I. operator at VI Tower under instructions from the K. & I. dispatcher. Such movements form the basis for this claim.

From the evidence in this case, it appears that the responsibility of the K. & I. dispatcher over train movements upon the rails of the other carriers

mentioned is due solely to the fact that such movements are controlled by signals operated by an employe of the Carrier. When those signals are not operating there is no feasible or practicable means for a K. & I. dispatcher to exercise any control of movements over such tracks. Hence, during the period when such signals were not operated, there is no basis for the claim.

During the period beginning at 2:00 P.M. on August 21st and ending at 2:00 P.M. on August 22nd such signals were in operation to govern train movements. Hence for such period of time the claim is valid.

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 the Carrier violated the Agreement.

AWARD

Claim sustained for three Train Dispatchers for period beginning at 2:00 P.M. on August 21, 1950 and ending at 2:00 P.M. on August 22, 1950 only, and otherwise it is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.