

Award No. 5806

Docket No. TD-5554

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(1) The Chicago, Rock Island & Pacific Railroad Company violated the intent of Article 1, Scope, of the existing agreement between the said carrier and the American Train Dispatchers Association when on July 3, 4 and 5, 1950, said carrier caused a train or trains to be operated on its Des Moines Division without direction or supervision by any train dispatcher (except between the hours of 9:00 A.M. and 5:00 P.M., on July 3, 1950), but instead operated such train or trains under or by authority and/or by direction of employes or others who are not subject to the provisions of the said agreement, and

(2) The Chicago, Rock Island & Pacific Railroad Company shall be required to compensate C. Z. Pollock and Elder Bylander, the then two senior and available and qualified train dispatchers at Des Moines, Iowa, for time lost as follows:

- (a) C. Z. Pollock at pro rata rate of \$19.30 per day, July 4 and 5, 1950, total \$38.60.
- (b) Elder Bylander at pro rata rate of \$19.30 per day, July 3, 4 and 5, 1950, total \$57.90.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties to this dispute, revised effective as of January 1, 1950, copy of which is required to be on file with your Honorable Board, and by this reference the said Agreement in its entirety is made a part of this submission the same as though fully set out herein.

Article 1, Scope, provides:

"(a). The term 'train dispatcher' as herein used shall include all Train Dispatchers excepting only one Chief Train Dispatcher in each dispatching office.

"NOTE: Qualified Train Dispatchers on the seniority roster will be used to effect relief of Chief Train Dispatchers for their weekly rest days, relief service and vacations.

To briefly summarize some of the salient points of this controversy, they are:

- (1) No train orders were issued by other than a train dispatcher.
- (2) This was double track mainline territory protected by automatic block signals.
- (3) Respondent had discontinued operations as a result of the S.U.N.A. strike.
- (4) Our operating rules provide that train orders will be used only for movements requiring their use.
- (5) Our operating rules comprehend instances of train operation without train orders, i.e., in the absence or failure of communications, trains may be moved as prescribed by the rules, even though operating in territory where trains are not operated by signal indications.
- (6) The Association has no contractual or other basis for a contention that it may prescribe when train orders shall be issued in the operation of our trains.
- (7) The Association has no contractual or other basis authorizing it to prescribe what records shall be maintained by this carrier covering the movement of its trains.
- (8) The evident contention of the Association that respondent cannot operate any of its trains over any portion of its railroad unless authorized by train dispatchers represents an unreasonable, unintended, and untenable construction of the agreement.

It is hereby affirmed that all data herein contained is known to the employees' representative and by this reference is made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: From June 25, 1950 to July 8, 1950, the switchmen on the Carrier were on strike. The Carrier immediately abolished all train dispatcher positions at the commencement of the strike. They were returned to their former positions at its close in pursuance of a special agreement between the parties.

On the night of July 2, 1950, Carrier's tracks were washed out between West Liberty and Iowa City, Iowa. On July 3, 1950, Carrier ordered out a work train with the necessary workmen, tools and materials to restore the damaged track to meet operating requirements. Claimant Pollock, the senior and available train dispatcher at Des Moines, was called for duty from 9 A. M. to 5 P. M. on July 3, during which period he issued orders for the movement of the work train to the scene of the track damage. The work train was operated on July 4 and 5 without further orders. The Organization contends that claimant Pollock should have been used on July 4 and 5, and that claimant Bylander should have been called on July 3, 4 and 5 to work the second track. Carrier contended there was no dispatching duties to be performed, no dispatching records to be kept, no related dispatcher's work to be done, and denied the claim.

It is clear from the record that all freight and passenger service was tied up by the switchmen's strike. Carrier had a right to abolish train dispatcher positions that were not needed where there was no work to be done. Awards 4001, 4389, 4455, 4787. When the work of a position disappears, the Carrier may abolish the position without penalty. Award 4849. But if there is work belonging to a class by virtue of a collective agreement, it must be performed

by employees of that class and not by others. Consequently, if there was train dispatcher's work to be done on July 3, 4 and 5, it belonged to train dispatchers and if it was performed by others, a claim by the dispatchers is valid. The controlling question is whether there was dispatcher's work to be performed on July 3, 4 and 5 of which train dispatchers were wrongfully deprived.

The Carrier insists that there was no need for a train dispatcher. No trains were operating. The Carrier's automatic signal system was in order. The route followed and used by the work train was in double track territory. All offices and stations were closed because of the strike so that train dispatchers would have had no means to communicate with offices in the involved territory. The "O.S.ing" of trains on the train sheet was not necessary because there were no trains operating whose location had to be constantly available. It is urged that if all other means of communication with the work train failed, the work train could protect itself under Carrier's operating rules by flagging.

The Employees contend that the scope rule of their Agreement with the Carrier, Article 1 (c), means that when trains are operated or records kept incidental thereto, a train dispatcher must be used. We cannot agree with this interpretation of the rule. We think the rule means that if an employee is used to issue train orders or otherwise handle trains, or to keep records incidental to train movements, the work belongs to a train dispatcher. But in the case before us, after Claimant Pollock issued the work orders on July 3, no further orders could have been issued because all stations in the involved area were closed because of the strike. There were no trains moving that could possibly interfere with the work train. There were no records to be kept which in any manner involved the safe operation of trains. The record clearly fails to show the need for a train dispatcher. No basis for an affirmative award can exist under such circumstances.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of May, 1952.