

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
CENTRAL OF GEORGIA RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of Train Dispatcher J. T. Starke et al, that:

(1) The Central of Georgia Railway Company, hereinafter referred to as "the Carrier", violated and continues to violate the provisions of the Schedule Agreement, effective April 1, 1938, and particularly Article 1 of said Agreement, when on December 20, 1950, and regularly thereafter Carrier required and continues to require the trick train dispatchers in its Macon, Georgia, train dispatchers' office, in addition to performance of duties of train dispatcher, to also perform duties of telegrapher, and

(2) Because of the Carrier's arbitrary and improper action, as set forth in above paragraph (1) of this claim, the Carrier shall now compensate Claimants J. T. Starke, R. G. Thompson, M. J. Sparrow, J. B. Benton, J. H. Epting, G. L. Durden, F. C. Laing, J. D. Grubbs, R. A. Newell, B. H. Scott and any and all other Trick Train Dispatchers, if any, who have been required or who may hereafter be required by the Carrier to perform duties of telegrapher in addition to their train dispatcher duties, for a minimum day's pay as telegrapher, at the applicable telegrapher rate of pay, in addition to what they have been paid or will receive as trick train dispatcher for each day on which they are required to also perform telegrapher duties, from December 20, 1950, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Central of Georgia Railway and its train dispatchers represented by the American Train Dispatchers Association, effective April 1, 1938.

Said agreement and subsequent amendments thereto are on file with your Honorable Board and are by this reference made a part of this submission as though fully incorporated herein. Among the rules of said agreement which are pertinent to the instant claim are those below quoted:

"Article 1 (a) Scope —

"The provisions of this Agreement shall apply to all positions of Train Dispatcher as the term 'train dispatcher' is defined, and the

OPINION OF BOARD: The claim is that the Carrier requires the Trick Train Dispatchers to also perform duties of Telegraphers in violation of the Scope Rule of the Agreement.

The Board must find from the evidence that the duties described are not in violation of the Agreement. No specific provision has been cited which would prohibit the assignment of the specified duties. The evidence is that Carrier's Operating Rules have been in effect since at least 1918. These Operating Rules contemplate that the employees will do the work referred to in their claim. The past practices that developed pursuant to the Operating Rules were not abrogated by the Train Dispatchers' Agreement effective April 1, 1938. There are no restrictions in the Collective Bargaining Agreement that would limit the Carrier in assigning this work to the employees. The Operating Rules are not in conflict with any provisions of the Agreement. The long established past practices were not changed by the Collective Bargaining Agreement and in fact were continued for many years after the Agreement and they are enforceable to the same extent as the provisions of the contract itself. See Awards 5331 (Robertson), 5768 (Smith), 4889 (Carter) and 4493 (Carter).

The Petitioner has failed to sustain its burden of proof to show a contract violation.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.