

Award No. 7954

Docket No. TD-7245

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

(a) The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as "the Carrier", violated and continues to violate Rules 1-(a), 1-(b) and 1-(c) of the currently effective Agreement between the parties to this dispute when, beginning on or about November 16, 1953, it abolished its Mobridge, South Dakota train dispatching office and transferred work within the scope of the Agreement to employes and/or supervisory officers not covered by the Agreement.

(b) The Carrier shall now restore to train dispatchers covered by the Agreement between the parties the work it has removed therefrom, as referred to in paragraph (a) of this claim.

(c) The Carrier shall compensate Train Dispatcher H. G. Teske at rate of trick train dispatcher for January 4, 5, 6, 7 and 8, 1954, and continuing for each day of subsequent weeks, Monday through Friday, account Carrier's violation of Rules 1-(a), 1-(b) and 1-(c) in requiring employes other than train dispatchers to transmit and verify repetitions of track car lineups, and account Carrier requiring and permitting employes and/or officers of the Carrier to perform other train dispatcher duties, such as preparing reports, distributing cars, and handling crew board.

EMPLOYES STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date September 16, 1950. A copy thereof is on file with this Division and made a part of this submission the same as though it were fully set out herein.

For the Board's ready reference the scope rule of the Agreement is here quoted in full:

"The point here made is that the handing of this routine clerical work back to whence it came is in conflict with the principles referred to, i. e., that a position may not be abolished with work remaining turned over to persons outside the agreement. With this contention we cannot agree, since except as clerical work may be incidental to positions covered by the dispatcher's agreement, the scope thereof does not include straight routine clerical work."

In other words, the preparation of these reports and the relaying of motor car lineups, distributing cars, and supervising crew boards could not be considered as "related work" as set forth in the current Train Dispatchers' Schedule Rule 1-(b) (2).

The dispatchers' Organization in their submission also make reference to current Train Dispatchers' Rule 1-(c) titled "Centralized Traffic Control". The carrier is unable to determine just what the dispatchers' Organization may have in mind with respect to this rule because in the territory involved there is no "Centralized Traffic Control".

In view of the information furnished herein it is believed the Board will realize that there is no schedule rule or agreement that would support the claims as set forth in the submission, and the Carrier respectfully requests that they be denied.

(Exhibits not reproduced)

OPINION OF BOARD: The dispute in this case is as to whether certain work performed at carrier's facility at Mobridge, South Dakota belongs to dispatchers under the scope rule of their agreement with the carrier.

It appears that prior to 1932, a train dispatching force of one chief train dispatcher and three trick train dispatchers was maintained at Mobridge. In 1932 the train dispatching office at Mobridge was consolidated with the office at Miles City, the division headquarters, and all train dispatching duties except for dispatching required on certain branch lines were transferred to that office. As a result of this consolidation, there remained at Mobridge only one combined chief-trick train dispatcher position to handle these branch line duties. This arrangement continued until August 1, 1943, at which time, due to war time increases in business, a regular train dispatching office was reconstituted at Mobridge with a chief dispatcher and three trick dispatcher positions to handle the branch lines and also a portion of the main line which was detached from the Miles City office. In December, 1943, because of the press of business, it became necessary to establish an additional train dispatcher position just to handle the branch line dispatching. After the war, business decreased and on November 1, 1952 the branch line train dispatcher position was abolished and the duties of this position were delegated to the remaining dispatcher positions. A year later, on November 16, 1953, the train dispatching office at Mobridge was completely eliminated and all train dispatching on the entire division was returned to Miles City.

The claim arises out of this elimination of the Mobridge dispatching office. It is alleged by Petitioner that when the office was eliminated, certain duties which previously had been performed by dispatchers at Mobridge were transferred to employees not within the dispatchers agreement.

The precise items of work involved are the copying and compiling of the 37 report, the 32 report, daily coal and fuel report, daily grain box situation report, and SFN stock report; the handling of the trainmen's board and regulating the swing brakemen's pool; the distribution of cars and other equipment, and the relaying of track motor car line-ups to the point of destination.

It is Petitioner's contention that all of these items of work are "related work" under the dispatchers' scope rule and belong exclusively to dispatchers

at Mobridge, where such work has been traditionally and customarily performed by dispatchers over a long period of time.

Carrier contends that the disputed items are not "related work" under the dispatchers' agreement, but that they constitute work which may be assigned either to dispatchers in order to fill out their assignments, or to telegraphers or clerks, as the operational requirements of the carrier dictate. This is in distinction, Carrier contends, to the kind of clerical work which follows directly from the dispatchers' recognized and primary functions, which type of clerical work was transferred to dispatchers at Miles City when the Mobridge office was closed down. The fact that the disputed items of work have been performed by dispatchers at Mobridge over a long period of time does not, according to Carrier, give them the exclusive right to such work under the agreement.

The dispute as to the track motor car line-ups is somewhat different from the other items of work involved and requires separate treatment. The essence of this dispute is that prior to the elimination of the Mobridge office, the dispatchers there issued the motor car line-ups directly to the branch-line offices or stations at which the employees who were to use these line-ups were located. Thus, in practice, the dispatcher issued the line-up to a telegrapher at the final destination, who repeated the information back to the dispatcher for verification, and then transmitted it directly to the employee for whom the information in the line-up was intended. Since the elimination of the Mobridge office, line-ups for the branch line have continued to be issued by dispatchers at Miles City, but are issued to the telegrapher at Mobridge and then relayed to branch line telegraphers at the point of final destination, thus adding one transmission step between the dispatcher who issues the line-up and the employee who receives it for his use. It is contended by the petitioner that this relay of the line-up by the telegrapher at Mobridge to other telegraphers is a usurpation of dispatchers' work; and that the issuance of line-ups to these branch line telegraphers can only be done properly under the agreement if they are issued directly from the dispatchers at Miles City to the stations concerned. Carrier concedes that the issuance of line-ups is work belonging to the dispatchers, but insists that there is nothing in the scope rule to prevent the relay of a line-up, once issued by the dispatcher, between telegraphers, whose normal duties include the transmission of communications of record.

The evidence as to the practice on the property in regard to this particular situation is inconclusive. Carrier states that similar relays are made by telegraphers elsewhere on carrier's property, and also refers to operating rules permitting relays of train orders by telegraphers. Petitioner states that where, as here, direct communication exists between dispatcher and destination, train orders and track line-ups are always issued directly to the destination. No prior awards have been brought to our attention which deal with this precise situation. Award 4516, however, which is cited by both parties, states that "the sending and receiving of train line-ups is work reserved to telegraphers . . . except for the recognized right of dispatchers to issue them in the first instance." We cannot find in the scope rule a requirement that the transmission of a lineup to its final destination, in addition to its issuance in the first instance, is reserved exclusively to dispatchers. Since there is no contention in this case that motor car line ups were issued in the first instance by anyone other than dispatchers at Miles City, the claim as to this item of work must be denied.

As to the other items of work, we do not understand petitioner's contention to be that such work is reserved exclusively to dispatchers under the scope rule at all points on carrier's property. The evidence is to the contrary. The argument is that the past practice at Mobridge, continuing as it did over many years, had the effect of making such work "related work" under the scope rule at that point. While the Board has in many cases in which it has held a scope rule to be ambiguous, decided the question of whether certain work falls under the scope rule on the basis of past practice alone, we do not think such decisions are applicable to the present case. The scope rule

involved here undertakes to describe the work covered and thus is less ambiguous than those scope rules which merely recite positions and leave the work done by such positions to be discovered through a study of past custom and practice.

We do not think that the kind of work involved in this claim is sufficiently related to the kind of work described in the scope rule so as to make such work the exclusive possession of dispatchers. See Awards 4703, 6312. Award 5018, cited by Petitioner as holding that work of a similar nature to the work here was "related work" under a similar scope rule, involved a situation where the employees objected to the addition of such work to their other duties. As pointed out in that Award, the questions presented in cases where employees object to additional duties on the basis that they are not included in the scope rule, and in cases where employees object to work being taken away from them which they claim is exclusively theirs under the scope rule, are quite different. It is well recognized by awards of this division that many classes and crafts of employees can be required to perform certain clerical duties, and that they may not avoid their performance by resort to their scope rules which do not specifically recite such duties. That is not to say, however, that once having been assigned such duties and having continued to perform them over a long period of time, the employees necessarily acquire the exclusive right to their performance. We think that the duties involved herein fall within this general category of clerical duties which may be assigned to and performed by dispatchers but which are not so closely related to the dispatchers' traditional functions as to give them the exclusive right to their performance. For these reasons, the claim as to these items of work must 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.