Award No. 8830
Docket No. TD-7859

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Carroll R. Daugherty, Referee**

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION

## SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) When the Southern Pacific Company (Pacific Lines), hereinatfer referred to as "the Carrier," on September 21, 1954, instructed the train dispatchers in its Beaumont, California, office to "assist" Mr. Fred Swindle to "break in" as a train dispatcher, i. e., to teach him the work of train dispatching, the train dispatchers involved were called upon by the Carrier to perform service outside of the scope of Article 1 (c), the work-definition provision of the current Agreement.

(b) The Carrier shall now pay to Train Dispatcher A. C. Sterner who, in compliance with the instructions referred to in above paragraph (a), assisted Mr. Swindle to "break in" as a train dispatcher during a total of eighteen (18) days, additional compensation therefor at the straight-time daily rate of $22.96, or a total of $413.28, and pay to Train Dispatcher B. J. Skipper who worked in place of Mr. Sterner two (2) days per week and, therefor, also assisted Mr. Swindle to "break in" as a train dispatcher during a total of three (3) days, additional compensation therefor at the straight-time daily rate of $22.96, or a total of $68.88.

**EMPLOYES' STATEMENT OF FACTS:** There is an Agreement between the parties, bearing the effective date of April 1, 1947. A copy thereof is on file with the Third Division of the Board and is hereby made a part of this submission the same as though it were fully set out herein.

For ready reference rules pertinent to this dispute are quoted here:

"ARTICLE 1 Section (a). SCOPE. This agreement shall govern the hours of service and **working conditions of train dispatchers:** (Emphasis supplied)

Award No. 3136 involved circumstances where dispatcher on the Detroit and Toledo Shore Line Railroad were required to perform duties held to be yardmaster work which circumstances are not in any way analogous to those here involved, and that award is not applicable to this claim.

The Board's attention is directed to the fact that even if the claim in this docket were otherwise valid (carrier does not so concede but expressly denies), there still would be no basis for the payment requested, since there is no rule in the current agreement providing for such compensation. This Board has recognized in numerous awards that it is not authorized to establish rates of pay or otherwise rewrite contract provisions.

**CONCLUSION**

Carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

**OPINION OF BOARD:** Under written instructions issued on September 21, 1954, by Carrier's Chief Dispatcher in Carrier's Beaumont, California, train dispatching office, Claimants Sterner and Skipper, trick train dispatchers at said office, spent parts of 18 and 3 days, respectively, during October and November, 1954, helping Telegrapher Swindle learn the work of train dispatching. For said training, Claimants ask straight-time compensation for said number of days respectively—in addition to the pay they received for their regular work.

It appears from the record that (1) Carrier had a policy of developing its own train dispatchers by promotion and training from within the ranks of its own employes; (2) Carrier's dispatchers had gone along with doing the training without extra compensation for many years during the terms of the current and previous Agreements, and even before; until (3) on July 25, 1953, the Organization notified Carrier that said training was not contemplated by the Agreement and requested Carrier to cease issuing instructions requiring dispatchers to perform same.

The issues presented for determination here are (1) whether Carrier violated the Agreement when it issued the above-mentioned training instructions to Claimants; and (2) if so, whether the reparation asked for by Claimants is properly to be granted.

The Employes and their representative take the position that affirmative answers to these questions are required and in support of said position argue as follows: (1) The Scope Rule of the Agreement, in particular Article 1, Section (c), lists four duties of Carrier's train dispatchers—primary responsibility for the movement of trains by train orders, or otherwise; supervision of forces employed in handling train orders; the keeping of necessary records

incident thereto; and performance of related work. (2) The language of none of these items can be interpreted or stretched to include the training or breaking in of neophyte train dispatchers. "Related work" in particular—the last of the four items—of necessity refers only to work connected with the other three items. (3) The past practice relied on by Carrier (a) consisted of training work voluntarily performed by train dispatchers and (b) ceased to be mutually acceptable to both Parties in 1953, when Carrier began formally to require such training work. (4) But in any case, because the Scope Rule is clear and unambiguous, past practice is not controlling. (5) Because Claimants were required to perform work outside the Scope of the Agreement, they are entitled to money reparation therefor.

In asking for negative rulings on the issues stated above, Carrier and its representative contend as follows: (1) The work of training novices by train dispatchers must surely be considered "related work" within the meaning of that term as used in Article 1, Section (c). That is, the Scope Rule does cover such work. (2) Even if "related work" were held not to include said work of training, Carrier has the right, unrestricted by any Rule of the Agreement, to add said duties. No violation is thereby involved. There is no issue here of taking away Scope-covered work. (3) If "related work" is held to be an ambiguous term, the long-standing practice of training on Carrier's property becomes explanatory and a part of the Agreement. The Organization may not unilaterally change the Agreement, nor may the Board. (4) No rule of the Agreement affords a basis for granting extra pay for said training work. The relief sought is not within the Board's jurisdiction to grant.

The Board rules that the instant claims cannot be sustained. This is not a case in which a carrier is alleged to have removed from an organization's jurisdiction work which by scope rule and/or practice thereunder properly belongs to an organization's members. It is a case in which work not directly specified in the scope rule has, in terms of said rule, been given or added to the main or regular work of an organization's members. There is nothing in the instant Agreement that prohibits the instant Carrier from formally requiring the breaking-in work here complained of. True, a strict reading of the four items listed in Rule 1(c) may not be found to include such training work. But said work is reasonably related to the work of train dispatchers. The Board, following the reasoning set forth in Award No. 4572, finds that Carrier had the right to require said work.

It should be understood that this ruling does not mean that Carrier may require a train dispatcher who is engaged in training work to relinquish his dispatching duties and responsibilities to a trainee. Indeed, Carrier itself does not so contend in this record.

**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 Agreement was not violated.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.