

Award No. 11067
Docket No. TD-12718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" violated the Schedule Agreement between the parties, effective June 1, 1960, specifically the Scope of Part I, when on August 1, 1960, coincident with the closing of the Zanesville, Ohio Train Dispatching Office, it permitted and/or required employes not covered by the Scope of the Schedule Agreement to perform duties and work formerly performed by the Train Dispatchers at Zanesville, Ohio.

(b) Carrier shall now compensate at pro rata Train Dispatchers' rate on each trick and on each calendar day the claimant or claimants from the list of Train Dispatchers identified in the Statement of Facts, who has not performed or will not perform train dispatching service commencing on August 1, 1960, and continuing until the violation ceases.

(c) Carrier and Organization shall conduct a joint check of the pertinent records to ascertain the applicable claimants and the amounts due, upon final disposition of this claim.

EMPLOYEES' STATEMENT OF FACTS: An Agreement on rules governing compensation, hours of service and working conditions, effective June 1, 1960, between the parties to this dispute, and applicable to the claimants in this case, was in effect at the time this dispute arose. A copy of that Agreement is on file with the Board, and is, by this reference, made a part of this submission as though fully incorporated herein.

The following rule is material here and is quoted for the Board's ready reference.

Part I SCOPE (Page 1)

"SCOPE

justment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

It has been shown that no work is being performed by employees other than Train Dispatchers to which Train Dispatchers have established an exclusive right that the Scope of the Rules Agreement was not violated; and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim before the Board is that Carrier cannot unilaterally remove from the Scope of Part I of this Agreement work formally performed by Train Dispatchers at Zanesville, Ohio and require this work to be performed by Employees not within the Scope Agreement, namely Block Operators.

"THE PENNSYLVANIA RAILROAD COMPANY

"PART I

**"PROVISIONS GOVERNING TRAIN DISPATCHERS, EMPLOYES
OF THE PENNSYLVANIA RAILROAD COMPANY.**

"SCOPE

"The provisions set forth in Part I of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company

and its Train Dispatchers, represented by the American Train Dispatchers Association, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

"The term "Train Dispatcher" as used in Part I of this Agreement shall include trick, relief and extra Train Dispatchers.

"When remote control or traffic control machines are operated by employees other than Train Dispatchers, a Train Dispatcher at the dispatching headquarters shall exercise direct supervision over the employees operating such machines.

"It is understood that nothing in this Agreement is intended to require any change with respect to the functions assigned to employees of the Company classified as "Train Directors."

It is clear that since 1933 until August 1, 1960 that the Train Dispatchers had been performing Block Operators functions. (This was necessary because the Carrier's traffic, particularly passenger, over the Zanesville Branch had decreased to where there was not sufficient work for all Employees of the various classes located at Zanesville.) In addition, duties other than Block Operators, had been performed by the Train Dispatchers including Western Union Work until 1950 and crew calling until 1954.

The supervision of the Buckeye Region, in 1959 and 1960, made various surveys to determine whether there were any areas of the operation wherein the efficiency and economy could be improved. The results showed that the Train Dispatchers at Zanesville hardly functioned as such and taking all the duties performed by the Train Dispatchers, there was not sufficient work for those employed in any capacity.

It is the position of the Organization "... that the work here in question has been performed by Train Dispatchers; that the performance of this work has never been claimed by other crafts or class; that the work therefore accrues to train dispatchers under their Scope Rule; that by past practice this work was negotiated into the Scope Rule and has never been changed or abrogated even during revision of currently effective Agreement dated June 1, 1960, and therefore Carrier cannot unilaterally and arbitrarily remove such work."

The Scope Rule in this claim is general in character and does not describe the work within it but sets forth the classifications of positions to which it applies. Therefore we must look to custom, tradition and practice of the system to determine what work is traditionally Train Dispatchers and that which is Block Operators. We find in the "Carriers Rules For Conducting Transportation" the following job descriptions.

"Train Dispatchers

"400N-19. Train Dispatchers report to and receive their instructions from the Superintendent Transportation or from such officer as he may designate. They must be familiar with the physical characteristics of the portion of the region in their charge. They are responsible for issuing train orders in the name of the Superintendent Transportation, transmitting and recording train orders as prescribed by the rules; for issuing such other instructions as are required for the safe and efficient movement of trains; for maintaining

the prescribed record of train movements; for having available, when relieved, a written memorandum of all train orders then in effect and other information relative to existing conditions the relieving dispatcher should know and for being assured that they are understood. They must also be conversant with the requirements of the current issue of C. T. 405, Special Instructions Governing Operation of Signals and Interlockings, in so far as their duties are concerned.

"Operators

"400N-21. Operators report to and receive their instructions from the Supervising Operator, unless otherwise provided.

"They must obey the instructions of the train dispatcher and train director.

"They are responsible for the care of the block or interlocking station, lights and supplies, the delivery of train orders and messages to the persons addressed, for arranging the use of blocks, tracks, interlockings, switches and signals and prompt movement of trains in accordance with the rules, train orders and special instructions.

"They must maintain the prescribed record of train movements and when practicable, observe passing trains for defects and proper display of markers.

"They must not absent themselves from duty until relieved and must notify the train dispatcher promptly should their relief fail to report at the prescribed time.

" * * *

"They must report the weather as required, and in case of sudden change, storm or fog, promptly advise the train dispatcher.

"When required, they will operate hand-operated switches, crossing gates, movable bridges and other devices as may be designated.

"They must be conversant with the requirements of the current issue of C. T. 405, Special Instructions Governing Operation of Signals and Interlockings, in so far as their duties are concerned.

" * * * ."

The operating rules are established unilaterally but the present Scope Rule was the result of the Organization attempting to reach an Agreement with the Carrier for a definition of a Train Dispatcher. They were finally agreed to effective June 1, 1960.

We are in Agreement with Award 7031 Third Division in which he stated:

"It appears clear to us that the work was not the exclusive work of any craft. Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of any craft in absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different

crafts at different points within the scope of the agreement."

Controlling awards sustaining this view are Awards 3827, 4889, 5702, 6409 Third Division.

It is the responsibility of the Carrier to operate with efficiency and economy and in so doing it may abolish positions not needed and reassign work to another craft who are entitled to perform it unless it has restricted its right to do so by Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Scope Rule has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1963.

LABOR MEMBER'S DISSENT TO AWARD 11067

DOCKET TD-12718

The Award not only intimates that under the guise of economy and efficiency Carrier may transfer work from craft to craft as it sees fit, but also erroneously holds that a practice indulged in at a particular point (which removes work from one craft and assigns it to another, without protest by the first craft) has no bearing upon custom, tradition, and practice under the erroneous reasoning that this is not system practice. All this despite the admitted fact that Train Dispatchers had been performing the disputant work at this point since 1933, with no protest from any other craft, and continued to do so through subsequent agreement revisions until the date of the violation.

For the aforementioned and other reasons, Award 11067 is incorrect and dissent thereto is registered.

/s/ R. H. Hack

R. H. Hack
Labor Member