

Award No. 11110
Docket No. TD-11575

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(a) The Chicago & Eastern Illinois Railroad Company, hereinafter referred to as "the Carrier" violated and continues to violate Article 1, Section (a) and (b) and Article 5, Section (a) of the currently effective Agreement between the parties to this dispute when it requires an employee not covered by the Agreement to perform relief service as Chief Train Dispatcher at Danville, Illinois.

(b) Claim that the Carrier shall now compensate the senior qualified and available extra train dispatcher one (1) day's pay at Chief Train Dispatcher rate for March 28, 1959, and each subsequent date that the above violation continues.

(c) Claim that in the event there is no qualified extra train dispatcher available on any date such violation occurs, Carrier shall compensate the senior qualified regularly assigned train dispatcher available on his regularly assigned rest day one (1) day's pay at one and one-half times the rate of his regularly assigned position on the date or dates an employee not covered by the above agreement rules perform service as Chief Train Dispatcher.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, effective December 1, 1950, on file with your Honorable Board and by this reference is made a part of this submission as though it were fully set out herein.

Article 1(a) and (b) and Article 5(a) which are particularly pertinent to the instant dispute are quoted here for ready reference:

ARTICLE 1

"(a). Scope

The term "Train Dispatcher" as herein used shall include Chief,

Dispatcher positions" are outside the Agreement's scope. Presented here with the same issue the answer must be the same. A denial award is, therefore, required.

The Carrier affirmatively stated that all data contained herein has been handled with the representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim appears several times in the record and will not be re-stated here.

The dispute in the instant case arises over the interpretation of Article 1(a) and (b) and Article 5(a) of the Agreement between the parties. These sections of the Agreement will not be re-quoted here.

The Carrier raises a procedural question that the claim here at issue has not been properly submitted by the train dispatcher aggrieved. This question was not urged in the oral arguments but, for the record, the Board hereby finds that the claim is properly before this Board. Award No. 4461, No. 4850, No. 19320.

There is a disagreement in the record as to how the matter had been handled prior to March 28, 1959. The Petitioner states in its brief under the Employee's Statement of Facts as follows:

"At the time this dispute arose, relief service for rest days, vacations, sickness and other absences on the Chief Train Dispatcher position at Danville, Illinois, was being performed by an employee fully covered by all rules of the current Agreement.

"On or about March 15, 1959, Carrier established a position of Train Rules Examiner, which is an official position, outside the scope of any Agreement.

"On March 28, 1959, Carrier used the occupant of this position, and continues to use him, to perform relief service on the Chief Train Dispatcher position, when he is available, thus depriving extra train dispatchers of work contractually theirs.

"When the Train Rules Examiner is not available for such relief service, Carrier requires employees covered by the Train Dispatchers Agreement to perform this service."

In the Carrier's Statement of Facts we find the following:

"The Carrier maintains two dispatching offices—one at Danville, Illinois and one at Salem, Illinois. Each of these dispatching offices is under the jurisdiction of a Chief Dispatcher. As an officer of the company the Chief Dispatcher does not have a 'regularly assigned' rest day, however, insofar as possible the Chief Dispatcher in each dispatching office is given one day of rest a week. Normally such relief as may be necessary is afforded by having another officer sit in for the absent Chief Dispatcher.

As was found by the Referee in Award No. 10705 the record in our case is not as complete as it might have been. It is difficult to tell what

practices have been followed in filling the position of Chief Train Dispatcher on rest days, vacations and other absences. However the record is clear that there has been discussions between the Petitioner and the Carrier in an effort to come to an Agreement on the principle issue involved here for some time prior to the date of the alleged violation.

The employees take the position that there is only one issue—whether the relief work arising out of the absence of the Chief Train Dispatcher must be covered by persons within the scope of the Agreement or, stated another way, whether persons not holding train dispatcher seniority may perform service as a Chief.

The Carrier states the issue is twofold: (a) whether or not Claimants have the exclusive right to work which is excepted from the Agreement between the parties; and (b) whether or not the Board should find that two awards by different referees on the same property, involving the same Agreement, dispute and parties should be reversed. Carrier cites Awards No. 7027, No. 10705, and many others. Claimants cites Award No. 7914 and many others.

Award No. 7027 decided in June, 1955 by Referee Rader, states:

“A reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions are outside of the Agreement’s scope.”

Award No. 10705, as it was finally adopted by this Board, reads in part as follows:

“The parties to this dispute are the same Organization and Carrier who were involved in the dispute determined by Award 7027 (Rader). The Agreement is also the same. In Award 7027 the Organization sought to compel the Carrier to assign an employe covered by the Scope Rule to relieve the Chief Train Dispatcher on his rest days. In the dispute now before us the Organization is seeking the same relief by alleging a violation of the Agreement and requesting compensation for the ‘senior qualified and available extra train dispatcher’ . . . or if none is available for ‘the senior qualified regular assigned train dispatcher available on his regularly assigned rest day . . .’ We dismissed the claim in Award 7027 because of ‘reading of the Agreement reveals that the interpretation sought here is not proper, by reason of the fact that Chief Dispatcher positions are outside of the Agreement’s scope.’”

* * *

“Upon a review of all considerations, we are compelled to hold that Award 7027 is not palpably wrong and that we must, therefore, hold that it is applicable to the facts in this dispute.”

The Petitioner maintains that the exception in Article 1(a), of one Chief Train Dispatcher on each train dispatching office, applies to a particular individual and not to the position. The awards cited by the Petitioner pertain to other properties and other Agreements and the issues decided in the other cases are not the same as the issues in this case. The issue in our case is whether or not the Employe has the right to demand the relief work involved. Many of the cases cited by the Petitioner raise the question as to how much pay is proper when the Carrier requires the Employe to work.

Awards No. 7027 and No. 10705 decided the issue that is before us in this case. Unless these two awards are palpably wrong it is our duty to follow them in this case.

In Award No. 10618 involving the same Petitioner but a different Carrier and a different issue we find a very similar Scope Rule but the Petitioner obtained a Supplemental Letter of Agreement from the Carrier in which it was stated in substance that temporary vacancies due to such weekly rest days, vacation in the position of Chief Train Dispatcher were to be filled by a qualified train dispatcher. In this case this Board stated:

"The Scope Rule establishes the fact that Mr. George's position was excepted from the Agreement subject to stipulations in the Letter of Agreement dated April 3, 1944."

In our case there is no such Letter of Agreement.

Since No. 10705 was grounded on No. 7027 and that award gave no explanation as to the reasoning upon which the award was predicated but simply stated a single sentence conclusion, a careful examination of the record in that case was necessary. There it appeared that notice was given by this Petitioner to this same Carrier on the 28th day of August, 1952 requesting that this Agreement be amended to do by negotiation what is now asked the Board to do by interpretation. This notice reads as follows:

"Danville, Ill.
August 28th 1952

"Mr. Ray Hill
Director of Personnel C&EI RR Co.
Chicago, Ill.

"Dear Sir;

"This is to constitute proper notice served in accordance with the provisions of the Railway Labor Act, to revise schedule No. 4 as well as the Memorandum of Agreement dated Chicago, Illinois November 16, 1950 as shown below;

* * *

"(2) Amend Article 3 of schedule No. 4 by adding new section (g) reading as follows:

'Relief of Excepted Chief Train Dispatchers'

'Qualified train dispatchers on the seniority territory involved will be used to effect relief of chief train dispatchers for their weekly rest days, vacations and other periods of temporary absence.'

Our Award No. 6341 reads in part as follows:

"Since the Organization through negotiation attempted to include a rule covering sick leave in the new Agreement and were not successful, it is not within the province of this Board to make an

award which could have the effect of writing a rule into the Agreement and which the Organization through negotiation failed to have included."

It seems that by the letter of request of August 28th, 1952 the Petitioner did not believe there was a rule which covered this dispute for the reason that they sought such a rule through negotiation.

Award No. 7914 involved a claim by a dispatcher who worked relief as a Chief dispatcher while the latter was on vacation. The issues in that case were not the same as the issues before us nor can we reconcile the conclusions of the award with Award No. 7027 and No. 10705.

We previously felt that only the occupant of the position of Chief Train Dispatcher is excepted from the Agreement but after a careful examination of the record, the awards cited and the briefs submitted we now hold that the position as well as the occupant is excepted from the Agreement and therefore the claim should be dismissed.

Claim dismissed.

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 does not have jurisdiction over the dispute involved herein; and

That the claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February, 1963.

LABOR MEMBER'S DISSENT TO AWARD 11110, DOCKET TD-11575

A statement by this Member, presented at adoption session on February 1, 1963, is attached to the Master File and points out wherein this Award is clearly erroneous, settles nothing and is therefore wholly devoid of any merit whatever.

The above referred to statement, in addition to pointing to improper or to say the least inappropriate handling by the majority, enumerates many errors in the Award including but not limited to the following:

1. The Award first holds that the claim is properly before the Board, discusses the merits and then holds:

"That this Division does not have jurisdiction over the dispute involved herein . . ."

Having held that the Board lacks jurisdiction, it is highly improper and purely dicta to discuss the merits of the claim.

2. This Award improperly relies upon Awards 7027 and 10705, both of which are palpably incorrect in their holdings.

Award 7027 being a dismissal Award which gratuitously inserts dicta having the effect of writing the word "Chief" out of Article 1(a) although that word appears in the Agreement.

3. The Award improperly follows the precedent set by Awards 7027 and 10705, while totally ignoring the precedent set by Awards 2943, 2944, 2986, 3096, 3344, 4012, 5202, 5244, 5371, 5659, 5716, 5829, 5904, 5975, 6292, 6581, 6583, 6746, and 7914, in which it has been held that the exception of the Chief Dispatcher from the Agreement applies ONLY to the one appointed incumbent.

Apropos here is Award 10063 which holds:

"However, it must be noted that precedent is not gospel--and relying entirely on precedent can result in compounding mistakes and perpetuating error."

As the record of this dispute makes clear, positions of Chief, Assistant Chief and Night Chief Dispatcher have been included in the Train Dispatcher craft or class for more than forty years and no erroneous and nonsensical Award of this Board can alter that established fact.

Dissent is hereby registered and attention is likewise called to dissent in Award 10705.

/s/ R. H. Hack

R. H. Hack, Labor Member