

Award No. 11277
Docket No. TD-12934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, (hereinafter referred to as "the Carrier"), violated the Agreement effective June 1, 1960, Part I, Scope, and an agreed upon understanding entered into by the parties on August 26, 1960, when it required and/or permitted official or supervisory personnel to assume the work of directing track motor car movements within Carrier's Lake Region September 1 to September 11, 1960.

(b) The Carrier shall now be required to compensate the regularly assigned first, second, third trick and relief train dispatchers, Desks B, C-F, D and E, Cleveland, one day at pro rata rate of train dispatcher, beginning September 1, 1960, and ending September 11, 1960, because of said violation.

EMPLOYES' STATEMENT OF FACTS: There is a Schedule Agreement in effect between the parties, effective June 1, 1960, a copy of which is on file with the Board, and which by this reference is made a part of this submission as though fully set out herein.

Part I of said Agreement is applicable to the individual claimants herein, and the pertinent provisions of the Scope Rule are:

"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."

Because of a system-wide strike of certain mechanical and maintenance employees which began at 12:01 A.M. September 1, 1960, and continued until

III. Under The Railway Labor Act, The National Railroad Adjustment 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 and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (1), 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 Agreement 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 was performed by employees other than Train Dispatchers to which Train Dispatchers have established any right; that the Scope of the Rules Agreement was not violated; and, that the Claimants are not entitled to the compensation claimed.

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 employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 26, 1960, Carrier's Manager of Labor Relations called the Organization's General Chairman to discuss arrangements regarding the exercise of seniority in the event of an anticipated strike by the Transport Workers Union. The verbal agreement or understanding which was reached was described by General Chairman E. C. Meyers, in a memorandum to his members, as follows:

"When normal operations resume all members will revert to the position held by them immediately prior to the strike. With the exception of positions retained for joint operation the exercise of seniority due to positions being abolished will not be permitted. The joint operation positions will be filled according to seniority but, as previously stated, all members will revert to their regular positions when normal operations resume. This includes anyone who worked a joint operation position during the strike as well as anyone who did not work."

It was also understood, according to Myers, that this agreement would become null and void if, during the strike, any Carrier official or supervisory employe performed duties that would normally be performed by employes covered by the A.T.D.A. Agreement.

On September 1, 1960 a system-wide strike of employes in the Maintenance of Equipment Department began. The Carrier immediately abolished all Train Dispatcher positions on the Lake Region except those assigned to District A (i.e. all positions on Districts B, C, D, E and F). Desk A positions were retained because of the joint operations in that territory with the Baltimore and Ohio Railroad.

During the course of the strike, which extended until September 12, 1960, Track Supervisors operated track motor cars to patrol territory under their jurisdiction. No Train Dispatchers were utilized.

On September 26, 1960, the Organization's Local Chairman charged the Carrier with violation of the August 26, 1960 Understanding since the track cars were operated "under supervision of officials and this supervision normally performed by employes covered by the American Train Dispatchers Agreement." A claim was instituted for "eight hours per day September 1, 1960, to September 11, 1960, inc. F-C, E, D, B desks regular first, second, third and relief dispatchers."

The claim was denied, appealed, and ultimately submitted to this Board.

The Organization argues substantially as follows:

1. Work which is incident to the direction of the Movement of Carrier's track motor cars is exclusively that of Train Dispatchers under the Collective Bargaining Agreement. That work has been historically, traditionally, and customarily performed by Dispatchers. Under the Scope Rule (which declares that "the term 'Train Dispatcher' as used in Part I of this Agreement shall include trick, relief and extra Train Dispatchers") no persons other than Dispatchers may perform such work.

2. The Carrier's own Rules impose upon its Dispatchers, as representatives of the Superintendent of Transportation, the obligation to perform and assume responsibility for this work. Operating Rule 80, for example, specifies that track cars will run as track car extras and be governed "by the same rules and special instructions as apply to trains other than passenger trains . . ." Moreover, operators may not permit track car extras to enter and proceed on a track of no assigned direction (on tracks governed by Block Signal System Rules) or proceed against the current of traffic on a track of assigned direction, "unless so authorized by the Superintendent of Transportation . . ."

Under Rule 400 N-19, the Organization notes, Train Dispatchers (1) report to and receive instructions from the Superintendent of Transportation, (2) are responsible for issuing train orders in the name of the Superintendent and for "issuing such other instructions as are required for the safe and efficient movement of trains . . ."

Additionally, under Rule 400 N-21, Operators "must obey the instructions of the train dispatcher and train director."

3. In their August 26 Understanding the parties expressly agreed that Carrier officers and supervisors would not perform duties normally performed by Dispatchers.

4. During the strike the Collective Agreement remained in effect, as did the Carrier's Operating Rules. The Carrier cannot accomplish by indirection that which, by the Agreement and its express covenant with the Organization, it was prohibited from doing directly.

These arguments, in our judgment, are not persuasive. The key question in this case is whether, in actuality, the Carrier "required and/or permitted official or supervisory personnel to assume **the work of directing track motor car movements** within Carrier's Lake Region . . ." (emphasis ours). We are not concerned with the **operation** of motor cars by supervisors since that is not Train Dispatcher's work. There seems to be no doubt that if supervisors performed car movement direction work, there would have resulted violations of the Agreement's Scope Rule. But there is no evidence whatsoever that this work was performed at all. The Carrier denies that anyone directed car movements on the tracks encompassed in Districts, B, C, D, E and F, and the Organization has offered no proof to the contrary.

In reality, the Organization seems to be contending that Dispatchers **should have been employed** to direct track car movements since (1) Operating Rule 80 provides for such direction, and (2) that type of work belongs to Dispatchers. Of course, the question of whether Dispatchers should have been retained is **not** part of the claim submitted here. However, even were this the claim, there are no grounds, in our opinion, on which it could be sustained. Neither the Agreement nor its Scope Rule requires the employment of Dispatchers at all times, regardless of need. The function of a Dispatcher, generally, is to issue instructions "as are required for the safe and efficient movement of trains". Rule 80 governs normal operating conditions when the services of Dispatchers are needed and required. Management, certainly, has the right to suspend such rules (they are not part of the Collective Agreement or negotiated with the Organization) for good and sufficient cause. In the case at hand there was no need to be concerned about the safe and efficient movement of trains since no trains were moved over the districts in question for the duration of the strike. Dispatchers, had they been retained, would have performed no useful function.

There is nothing in the August 26 Understanding, moreover, which can be interpreted as an agreement that Dispatchers would be retained, regardless of the need for their services. And there is no evidence of a custom or practice of retaining Dispatchers when the track is out of operation or when the line is struck. (In District A, it may be noted, where operations were maintained because of B. and O. trains passing through, Dispatchers were retained.)

Under the circumstances the claim must be denied.

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 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 neither the June 1, 1960 Agreement nor the August 26, 1960 Understanding were violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1963.