

Award No. 14175
Docket No. TD-15466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

READING COMPANY

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

(a) The Reading Company, (hereinafter referred to as "the Carrier"), violated the currently effective schedule agreement between the parties, Rule 1 thereof in particular, when on April 13, April 23, April 24, May 5, May 11, May 13, May 20 and June 3, 1964, it required and permitted work within the scope of the said schedule agreement to be performed by employees not within the scope thereof.

(b) The Carrier shall now be required to compensate the senior available extra train dispatcher one day's compensation for each of the dates specified in paragraph (a) above because of said violation of the schedule agreement.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, copy of which is on file with this Board. Said Agreement is by reference incorporated into this submission the same as though fully set out herein. For ready reference, Rule 1(a), Rule 1(b)2, and Rule 1(d) are here quoted in full:

"RULE 1

"(a) SCOPE:

The term 'train dispatcher' as hereinafter used (and as defined in Section (b) of this Rule) shall be understood to include chief, assistant chief, trick, relief, and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters, and have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more than one chief dispatcher on any division.

"(b)

2. Trick Dispatchers, Relief Dispatchers, Extra Dispatchers.

Trick Train Dispatchers: Relief Train Dispatcher: Extra Train Dispatcher: These classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains

Under the facts and circumstances present in this case and the reasons hereinbefore stated, Carrier submits that the claim as here submitted is without merit and not supported by any rule of the effective agreement, and requests the Board to so find and deny the claim.

OPINION OF BOARD: Employees contend that when Carrier extended the Yard limits, Carrier did not reclassify tracks from main tracks to yard tracks; that the claim is concerned only with the movement of trains on main tracks and not yard tracks; that the control of the movement of trains on the main line within Yard limits "has customarily and traditionally been performed by Train Dispatchers", that employees not within the Scope Rule are moving trains in violation of Rule 1(a), 1(b) 2 and 1(d) of the Agreement.

Carrier replies that the Train Dispatchers do not have the exclusive right to move trains on main tracks within Yard limits; that Operating Rule 80 has long established the practice that employees other than Train Dispatchers have moved trains; that no Train Dispatcher has been displaced; "that the Yardmaster was only performing his customary and accepted duties on this property."

Rule 1(b) describes the work of employees covered under the Train Dispatchers Agreement. It reads:

"2. Train Dispatchers, Relief Train Dispatchers, Extra Dispatchers.

Trick Train Dispatcher: Relief Train Dispatcher; Extra Train Dispatcher: These classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work." (Emphasis ours.)

Operating Rule No. 80 provides for the movement of trains "Within Yard Limits" as follows:

"(a) When a track car movement is to be made on other than main track, track car operator must obtain authority from yardmaster.

(b) When a track car movement is to be made on main track in automatic block signal territory track operator must obtain permission of Form D-TC-1 from yardmaster, but in his absence from Train Dispatcher. Track cars must be clear of the main track and reported clear by the time indicated on Form D-TC-1."

There is no question but that under Rule 1(b) 2 Train Dispatchers are exclusively "responsible for the movement of trains by train orders". No trains were moved within the Yard limits by train orders. Had they been so moved on the main tracks within the Yard limits, the issue would have been moot.

What then is meant by "or otherwise" moving of trains. Employees contend that Rule 80 cannot supersede the rules of the Agreement, that Yardmasters have no "right to issue D-TC-1 on main tracks", and that prior to the time Carrier extended the Yard limits, "the train dispatcher was required to authorize the issuance of Form D-TC-1 through signalmen or operators and to record the movements".

It is a fundamental principle of this Board that when there is a direct

conflict between provisions of the Agreement and an Operating Rule that the terms of the Agreement prevail and take precedence. The connotation of "or otherwise" as used in Rule 1(b) 2 is a general one. Its meaning and the intent of the parties can be ascertained only from history, practice and tradition. The issuance of Form D-TC-1 by Yardmasters within Yard limits is not per se in direct conflict with Rule 1(b) 2. It gives meaning to the term "or otherwise" in that Rule.

There is no probative evidence in the record that Train Dispatchers had ever issued Form D-TC-1. Employees allegation that the Train Dispatcher had been "required to authorize issuance of Form D-TC-1 through signalmen or operators" refers to territory outside the Yard limits. But in any event it is a mere assertion and not evidence. Further, Operating Rule 80 has been in effect for more than twenty years. There is no showing that the Employees had ever refused to abide by this Operating Rule or had ever previously objected to the issuance of Form D-TC-1 by Yardmasters within Yard limits.

Employees rely heavily on Award 6885 as supporting its claim. That Award is distinguishable. First, the Train Dispatcher position was abolished and the position of Assistant Trainmaster was newly established. Second, the Board held that train and engine crews moved trains, "within yard limits on their own initiative" and that "when viewed in the light of all conditions and circumstances is tantamount to the issuance of train orders" by Assistant Trainmasters. These instructions included not only the movement of trains on the main line within the yard limits, but also "for the meeting of such trains within the involved yard limits as established".

Unlike the facts in Award 6885, the issue in this case is based primarily on history, custom and practice. Employees so state in their Ex Parte Submission. They say:

"Therefore, the issue to be resolved here is whether the work of directing the movement of Carrier's track cars on the main line track between Essington and Eastwick which has been historically, customarily and traditionally performed by Train Dispatchers, is within the scope of the agreement and therefore work contracted to the claimant employees . . ." (Emphasis ours.)

Obviously, this is an admission that "train orders" were not issued. There is no evidence that train orders were issued or that the movement of trains was "tantamount to the issuance of train orders". On the contrary, the historical, customary and traditional practice claimed by the Employees is based upon the interpretation of the meaning of "or otherwise" contained in Rule 1(b) 2, which the Employees say "obviously relate to the phrase 'by train orders' which immediately precede those two words".

But here we have Operating Rule 80 which was not involved in Award 6885. That Rule gives historical, customary and traditional meaning to "or otherwise" in Rule 1(b) 2 of the Agreement. This Operating Rule has been in existence and known to the Employees for many years prior to the filing of this claim. It has been the historical, customary and traditional practice of moving trains on the main line within Yard limits by Form D-TC-1 issued by Yardmasters for more than twenty years.

In the basis of all the relevant and probative evidence in the record, there is no merit to the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. H. Schulty

Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.

DISSENT TO AWARD NUMBER 14175, DOCKET NUMBER TD-15466

Dissent is registered to Award 14175 for the following reasons:

- (1) It is factually incorrect,
- (2) It is premised substantially upon evidence belatedly offered and issues belatedly raised by the Carrier, and therefore improperly of record, and
- (3) It ignores and fails to accord warranted consideration to material evidence submitted by the Employees and properly of record.

These basically important considerations were the subject of an extensive presentation, wherein material and applicable authority was cited, at a rediscussion following issuance of the proposed Award which has been adopted by this Division without change.

Because of the failure of the majority to render an Award which is factually correct, which is premised upon the evidence and issues properly before it, and which accords warranted consideration to the evidence and issues which clearly are properly of record, Award 14175 is grossly in error, is completely devoid of precedent value, and is rendered in an incredible disregard of long established principles of this Board, which were pointed out with extensive citation of authority.

R. H. HACK
Labor Member