

Award No. 15468
Docket No. TD-16351

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 March 22, 1965 by issuance of General Order No. 43 concerning the operation on the Olney Branch, and on April 12, 1965, by issuance of General Order No. 60 concerning the operation on the Frankford Branch, it required and permitted work within the scope of the said 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 pay for each day from March 22, 1965 to May 29, 1965 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) Definitions.

* * * * *

On November 5, 1965, General Chairman Farrell acknowledged receipt of Carrier's denial, pointed out the Organization's disagreement therewith, and referred the dispute to the President of the Organization for further handling in accordance with the Railway Labor Act as amended. See Exhibit TD-5.

This dispute having been handled in the usual manner, up to and including Carrier's highest designated officer, and by him declined, it is therefore properly before your Honorable Board for adjudication.

It is hereby affirmed that all data herein presented has been discussed with or is known and available to the Carrier and is made a part of this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: By General Orders No. 43 and 60 of March 22 and April 12, 1965, Carrier reclassified its Frankford-Olney Branch from Timetable and train order authority to yard limits and rules. This extension of yard limits was necessitated by a diminished usage of the branch. It is an undisputed fact that no train dispatcher was removed or displaced as a result of this revision in operating procedure. Instead, once the territory acquired the status of yard limits, the Yardmaster at Erie Avenue functioned in his customary and historical capacity of directing yard movement. The area in dispute encompasses approximately 2.7 miles.

The Agreement between Reading Company and American Train Dispatchers Association, revised February 1, 1955, is on file with Your Board and is incorporated herein by reference.

OPINION OF BOARD: We are here concerned with two alleged violations, described in the Statement of Claim as follows:

"(a) . . . when on March 22, 1965 by issuance of General Order No. 43 concerning the operation on the Olney Branch,

(b) and on April 12, 1965, by issuance of General Order No. 60 concerning the operation on the Frankford Branch, it required and permitted work within the scope of the said agreement to be performed by employees not within the scope thereof."

Organization asks this Board to require the Carrier "to compensate the Senior available extra train dispatcher one day's pay for each day from March 22, 1965 to May 29, 1965 because of said violation of the Schedule Agreement."

Carrier states that its action, via General Orders Nos. 43 and 60 of March 22 and April 12, 1965,

" . . . reclassified its Frankford-Olney Branch from Timetable and train order authority to yard limits and rules. This extension of yard limits was necessitated by a diminished usage of the branch."

Carrier also points out that no train dispatcher was removed or displaced as a result of the revision in operating procedure; that instead, once the territory acquired the status of yard limits, the Yardmaster at Erie Avenue "functioned in his customary and historical capacity of directing yard movement."

It is Carrier's position that it has "the prerogative of changing Yard Limits by either extending them or reducing them; and the nature of the Train Movements in this area are such that they can be operated under existing rules with safety. . . ."

Argument offered here in behalf of Carrier is that

"The issues involved in the present dispute have already been decided in Award 14175 (Dolnick) involving these same parties and the same rules.

There, as here, Carrier by a General Order extended yard limits to a branch line where traffic had diminished. It had formerly been controlled by time and train orders."

Award 14175 denied the claim, and, argument in behalf of Carrier is that this Division has held that, unless palpably wrong, it is never warranted in overruling, in a subsequent dispute between the same parties, a previous Award construing the identical provisions of their contract. Cited Awards on this point include 8419, 8279, 14255, 14263, 14264, 14362, 14820, 15174, 15176, 15177 and 10911.

Argument in behalf of the Carrier asserts Award 14175 is not palpably wrong.

The Organization points to Carrier's Operating Rules for a definition of Main Track. That definition follows:

"A track extending through yards and between stations upon which trains are operated by time table or train orders, or both, or the use of which is governed by block signals." (Emphasis ours.)

Effective March 22, 1965 when the Carrier issued General Order No. 43 pertaining to the Olney Branch, it stated:

"The method of operation on the Olney Branch Between Erie Avenue 'NQ' interlocking and Frankford Junction is changed from that of Time Table and Train Orders to Yard Rules, and the branch is placed under the jurisdiction of Yardmaster at Erie Avenue Yard rules to apply."

There follows additional paragraphs relating to Speed Limit; the necessity of train and engine crews communicating with the Yardmaster for permission before proceeding.

Organization asserts that prior to March 22, 1965 (in the case of the Olney Branch, and April 12, 1965 in the case of the Frankford Branch) both Branches were listed in Carrier's currently effective time table as "Single MAIN TRACK portions of the railroad with the designated Method of Operation being listed as Time Table and Train Order."

It is evident that the parties are agreed the method of operating on these branches "was changed" by Carrier's General Orders Nos. 43 and 60.

The question to be resolved is: did the change in operation violate the agreement, as charged by the Organization?

The applicable Agreement, in its Scope Rule, states clearly that the duties of dispatchers are: to be responsible for the movement of trains by train orders or otherwise." This is their basic responsibility.

It is thus clear that when the Carrier, by General Order, extended its Yard limits and changed from time table and train order authority to Yard limit rules, its action was a violation of the Dispatchers' Agreement, specifically the NOTE to Rule 1 (b) 2, insofar as the direction of trains on the branches here involved is concerned. A sustaining Award as to a rules violation is, therefore, required.

In so holding, we are aware that our findings and Award conflict with and overturn Award No. 14175, involving these same parties. We are not concerned here with the movement of track cars. The facts before us in this Docket require a sustaining Award, so far as Part (a) of the claim is concerned.

The claim here is brought by the American Train Dispatchers' Association.

Part (b) of the claim asks that Carrier be required to compensate the senior available extra train dispatcher one day's pay for each day from March 22, 1965 to May 29, 1965 because of said violation of the schedule agreement.

We have participated in many Awards of this Board where, upon a finding that a rules violation has accrued we awarded the damaged party compensation to make him whole for the wage loss he suffered through Carrier's breach of the Agreement.

The claim here is for certain unnamed Claimants, but there is no evidence of wage loss; and this Board has no authority to impose penalties.

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 Agreement was violated.

AWARD

Part (a) of the claim is sustained.

Part (b) of the claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.

Keenan Printing Co., Chicago, Ill.

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