

Award No. 18556
Docket No. TD-18978

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
SEABOARD COAST LINE RAILROAD COMPANY

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Articles 1(a) and 1(b) thereof in particular, when beginning May 22, 1968, or before, and continuing since, it has required and/or permitted a supervisory employe or officer not within the scope of said Agreement to perform work covered thereby.

(b) The Carrier shall not compensate the senior available extra train dispatcher, as specified in paragraph (e), one day's compensation at the applicable daily rate, and continuing thereafter the Carrier shall compensate the senior available extra train dispatcher one day's compensation at the applicable daily rate for each day until Carrier has terminated said violation as referred to in paragraph (a) hereof.

(c) The Carrier shall not compensate the senior regularly assigned and available train dispatcher, as specified in paragraph (e), one day's compensation at the applicable daily rate, and continuing thereafter, in event no extra train dispatchers are available, the Carrier shall then compensate the senior regularly assigned train dispatcher, observing rest days and available for service, at the applicable daily rate for each day until Carrier has terminated said violation as referred to in paragraph (a) hereof.

(d) A joint check of the Carrier's time rolls (pay rolls) shall be made by the Carrier and the General Chairman of the Claimant Organization, to determine the available dates, on and after, August 1, 1968, of those entitled to payments required by paragraphs (b) and (c) of this claim.

(e) Named Claimants referred to in paragraphs (b) and (c) above on specific dates as referred to in paragraph (a) above are identified as follows:

NAME	STATUS	DATE	PRO-RATA
L. M. McTaggart	Extra	May 23, 1968	8
N. T. Alderman	Extra	May 24, 1968	8
R. P. Sani	Extra	May 25, 1968	8
N. T. Alderman	Extra	May 27, 1968	8
N. T. Alderman	Extra	May 28, 1968	8
L. M. McTaggart	Extra	May 29, 1968	8
B. T. Phillips	Extra	May 30, 1968	8
B. T. Phillips	Extra	June 1, 1968	8
N. T. Alderman	Extra	June 3, 1968	8
N. T. Alderman	Extra	June 4, 1968	8
L. M. McTaggart	Extra	June 5, 1968	8
B. T. Phillips	Extra	June 6, 1968	8
B. T. Phillips	Extra	June 7, 1968	8
B. T. Phillips	Extra	June 8, 1968	8
N. T. Alderman	Extra	June 10, 1968	8
L. M. McTaggart	Extra	June 12, 1968	8
L. M. McTaggart	Extra	June 13, 1968	8
N. T. Alderman	Extra	June 14, 1968	8
B. T. Phillips	Extra	June 15, 1968	8
K. M. Stephens	Assigned Rest Day	June 17, 1968	8
B. W. Maloy	Assigned Rest Day	June 18, 1968	8
L. M. McTaggart	Extra	June 19, 1968	8
N. T. Alderman	Extra	June 20, 1968	8
L. M. McTaggart	Extra	June 21, 1968	8
B. T. Phillips	Extra	June 22, 1968	8
K. M. Stephens	Assigned Rest Day	June 24, 1968	8
B. W. Maloy	Assigned Rest Day	June 25, 1968	8
R. P. Sani	Extra	June 26, 1968	8
B. T. Phillips	Extra	June 27, 1968	8
L. M. McTaggart	Extra	June 28, 1968	8
L. M. McTaggart	Extra	June 29, 1968	8
K. M. Stephens	Assigned Rest Day	July 1, 1968	8
B. W. Maloy	Assigned Rest Day	July 2, 1968	8
N. T. Alderman	Extra	July 3, 1968	8
B. T. Phillips	Extra	July 4, 1968	8
L. M. McTaggart	Extra	July 5, 1968	8
C. M. Peek	Assigned Rest Day	July 6, 1968	8
K. M. Stephens	Assigned Rest Day	July 8, 1968	8
B. W. Maloy	Assigned Rest Day	July 9, 1968	8
N. T. Alderman	Extra	July 10, 1968	8
L. M. McTaggart	Extra	July 11, 1968	8
B. T. Phillips	Extra	July 12, 1968	8
R. P. Sani	Extra	July 13, 1968	8
K. M. Stephens	Assigned Rest Day	July 15, 1968	8
B. W. Maloy	Assigned Rest Day	July 16, 1968	8
L. M. McTaggart	Extra	July 17, 1968	8
B. T. Phillips	Extra	July 18, 1968	8
B. T. Phillips	Extra	July 19, 1968	8
L. M. McTaggart	Extra	July 20, 1968	8
K. M. Stephens	Assigned Rest Day	July 22, 1968	8
B. W. Maloy	Assigned Rest Day	July 23, 1968	8
N. T. Alderman	Extra	July 24, 1968	8
R. P. Sani	Extra	July 25, 1968	8
L. M. McTaggart	Extra	July 26, 1968	8

NAME	STATUS	DATE	PRO-RATA
C. M. Peek	Assigned Rest Day	July 27, 1968	8
R. P. Sani	Extra	July 30, 1968	8
B. W. Maloy	Assigned Rest Day	July 31, 1968	8

EMPLOYEES' STATEMENT OF FACTS: Positions of Night Chief and Assistant Chief Dispatchers are within the scope of the Agreement pursuant to the provisions of Article 1(a) thereof, and here quoted:

"The term 'train dispatcher' as hereinafter used (and as defined in paragraph (b) of this rule) shall be understood to include chief, night 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.

NOTE: It is agreed that one chief dispatcher in each dispatching office is excepted from the rules of this agreement."

Article 1(b) (1) of the Agreement defines the duties and work of night chief dispatchers and assistant chief dispatchers as follows:

"These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

Thirteen claims which were originally submitted separately are consolidated herein. Each of them involve the same factual background, Agreement rules and issues, differing only as to specific claim dates and the identity of the respective individual Claimants. They are for all practical purposes identical. This consolidation of the claims satisfies the procedural requirements of Section 3, First (i) of the Railway Labor Act, and: Permits expeditious handling in that it avoids a multiplicity of claims presenting the same issues.

Prior to March 10, 1968, there were two Chief Dispatcher offices located in Tampa, Florida, one at Florida and Whiting Streets, and one at 4020 Adamo Drive. Mr. W. C. Dykes held the position of Chief Dispatcher at Florida and Whiting Streets, and Mr. M. R. Herring held the position of Chief Dispatcher at 4020 Adamo Drive.

On March 10, 1968, the Chief Dispatcher located at Florida and Whiting Streets along with all assistant chief dispatchers, trick, relief, and extra train dispatchers under his jurisdiction were transferred to Division Superintendent's headquarters located at 4020 Adamo Drive, Tampa, Florida.

By special agreement dated July 25, 1967, Chief Dispatcher W. C. Dykes was to remain an Excepted Chief Dispatcher in charge of the same territory

trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick Train Dispatchers
Relief Train Dispatchers
Extra Train Dispatchers

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."

Portions of Memorandum Agreement, dated July 25, 1967, implementing the consolidation of the separate dispatching forces at Tampa, Florida, are also quoted below:

"4. Effective September 1, 1967, or as soon thereafter as Carrier can make arrangements therefor, the train dispatching force now assigned in former Seaboard South Florida Division train dispatching office will be moved to the former Coast Line Tampa Division train dispatching office at Tampa. In transferring such positions pending the consolidation of the two staffs, as provided for herein, no position will be abolished, terminated or in any way disturbed.

7. Until such time as the two train dispatching staffs are consolidated the provisions of Article I(a) and note thereto of the currently effective working agreement shall not be applicable in the Tampa office."

Articles I(a) — Scope, and I(b) — Definitions, quoted above, while largely taken from the former SAL agreement, are a composite of the respective rules on both former properties. It does not follow that composite rules take prior interpretations to rules of either of the former companies.

Pertinent correspondence with regard to this claim is attached to this submission as Carrier's Exhibits "A" through "G," in conformity with instructions of the Third Division and requirements of Circular No. 1 of the National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here rests on the claim that the Carrier transferred work from Train Dispatchers to a newly created position Transportation Assistant, excepted from the Agreement. The work allegedly reassigned in violation of the Agreement was that of supervising telegraphers and the "handling" of time tickets.

The claim asserts that the Carrier violated Article I Scope of the current contract quoted below in pertinent part:

"(a) Scope

The term 'train dispatcher' as hereinafter used (and as defined in paragraph (b) of this rule) shall be understood to include chief, night chief, assistant chief, trick, relief and extra dispatchers, ex-

cepting 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.

NOTE: It is agreed that one chief dispatcher in each dispatching office is excepted from the rules of this Agreement.

(b) Definitions

1. Chief Train Dispatchers
Night Chief Dispatchers
Assistant Chief Train Dispatchers

These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick Train Dispatchers
Relief Train Dispatchers
Extra Train Dispatchers

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."

First, as to the claim of violation relating to the supervision of telegraphers. This duty is assigned to the Chief Dispatcher and here, following merger, was delegated to the Transportation Assistant, as stated by the Carrier. Prior to the merger such duty was performed by the Chief Dispatcher on one railroad and by the Assistant Chief Dispatcher on the other, the latter position presumably being within the scope of the contract then effective for that railroad (the terms of the superseded contract are not in the record).

In support of its position on the alleged violation with respect to telegraphers, the Organization states only that the Carrier "conceded" that this work was within the scope of the Agreement because Train Dispatchers were assigned to relieve the Transportation Assistant for vacation and illness. Upgrading of an employee from the bargaining unit to an excepted position for these purposes is a usual and common practice and offers weak evidence of a breach of contract or in support of a past practice in the construction of the contract language. A careful review of the record reveals no other evidence as having been advanced by the Organization. We have here an assertion without proof of any evidentiary value.

In any case, the Scope Rule clearly assigns the work of supervising telegraphers to an excepted position. In light of this fact, there can be no "taking away" of work from employees covered by the Agreement as charged in the

claim. Since they were not given this work by contract, it is immaterial that the work was delegated from one excepted position to another.

As to the handling of time tickets, the Organization state that such work has been performed by Assistant Chief Dispatchers and Night Chief Dispatchers "for two decades or longer," but does not indicate on which of the merged railroads such had been the practice. The Carrier asserts that the work was performed on one of the two railroads by the Night Chief Dispatcher and variously by the Office Trainmasters or employees of the Division Paymasters office on the other, adding that, "all of whom were excepted from the agreement here involved."

Thus, there was no uniformity in the handling of time tickets prior to the merger and no past practice can be shown which supports the claim, since the statement of the Carrier was not challenged by the Organization on the property nor in its submissions to the Board. To establish this work as "related" to the work of Train Dispatchers, proof must be established that the work historically and customarily has been exclusively performed by Dispatchers. This proof is not in the record before us and it is our conclusion that the Organization has failed to meet its burden in establishing exclusivity of assignment to the work in question.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May, 1971.

DISSENT TO AWARD 18556, DOCKET TD-18978 **REFEREE J. THOMAS RIMER**

The Award quotes the controlling rule of the Agreement that specifically names Chief Train Dispatchers, Night Chief Dispatchers, and Assistant Chief Train Dispatchers. The rule excepts only ONE Chief Train Dispatcher from performing the duties described in the rule. The Award then states:

"Since they were not given this work by contract, it is immaterial that the work was delegated from one excepted position to another." Complete nonsensical thinking.

The Majority's attention is REDIRECTED to Award 16837, Docket TD-17665 where this same carrier before this Board stated that checking time tickets was a Train Dispatcher's duty " * * * for many years * * * ."

Based upon facts, the Majority has now rendered a decision on both sides of the fence and can be proud it has contributed more confusion to the industry.

For these and other reasons, this dissent is registered.

G. P. Kasamis
Labor Member