

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22183
Docket Number TD-21670

Robert W. Smedley, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe **Railway** Company

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

(a) The Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as "the Carrier") violated, and continues to violate the provisions of the effective Schedule Agreement **between** the parties, Article I thereof in particular when, on or about **5:45** a.m., August 9, 1971, the Carrier unilaterally transferred control of the TCS territory between Bandini, California and Los Nietos, California to employes other than those represented by the Organization, permitting and/or requiring said employes to perform work within the Scope of the employes represented by the Organization (American Train Dispatchers Association).

(b) Carrier shall now be required to restore to the employes represented by the Organization the work in question which historically, traditionally, and customarily has been performed by train dispatchers.

(c) The Carrier shall **now** be required, because of said violations, to compensate the senior available extra train dispatcher for each day, and each trick, effective **5:45** a.m., August 9, 1971, one (1) day's compensation at pro rata rate applicable to train dispatcher for each of the above mentioned violations in the Carrier's Los Angeles Division Train Dispatchers' Office located at San Bernardino, California and to continue until the violations referred to have terminated.

(d) In the event no extra train dispatchers were available for service for any of said assignments on any of the said dates, then the Carrier shall be required to compensate the senior regularly assigned train dispatcher available account observing assigned weekly rest day or days for each such day or days at the time and one-half rate applicable to service performed by train dispatchers on their assigned weekly rest days.

(e) The identity of the respective individual claimants shall be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The complaint is that Carrier transferred control of train movements from the dispatchers to telegraph operators at Hobart, California on some 2.1 miles of track. The Carrier applied to the Department of Transportation for approval of the system modification. In the proposed arrangement, the telegraph operator was to " * * * continue to work under the supervision of the Dispatcher."

"Article I

"Section 1. This agreement governs the hours of service **and working** conditions of chief, assistant chief, trick, relief and unassigned train dispatchers
* * * "

The above scope rule is general. The dispatcher's duties are not defined. The Union contends that the dispatchers had previously performed the work and, thus, it is encompassed in the scope rule. The Carrier contends that the dispatchers " * * * continue to direct the operation as to movement of trains through the territory in question."

There is no doubt that a change was wrought. Certain train control devices were **removed**. These had previously been manned physically and directly by dispatchers. The function was then placed in a traffic control system operated by telegraphers. In past practice elsewhere on the line identical systems have been and continue to be used.

X The record of the proceedings on the property consists entirely of correspondence containing repeated charges by the organization and denials by the Carrier. The claims by the Union are subjective conclusions without any supporting facts. Repetition does not add credence to mere allegations. It is the burden of the organization to prove the facts supporting its claim by probative evidence. Mere assertion is no substitute for proof.

A letter addressed to the General Chairman of the Association signed by 15 dispatchers attests that after the complained of change " * * * the operators at Hobart do exercise responsibility for the operation of the territory **controlled** by the T. C. S. machine largely independent of the train dispatchers' authority, only rarely

consulting the dispatcher in case of unusual circumstances." This, too, is subjective and **conclusory** in nature. It is also hearsay. One does not cross-examine a letter. No dates, times and incidents are mentioned. Nor is there any evidence in the record describing the dispatchers' exclusive duties historically, customarily and traditionally, system wide on the property. That information would be necessary in order to make comparisons and arrive at factual conclusions whether the change undermined the **dispatchers' prerogatives.**

A letter by the General Chairman states: "The Organization's position does not, as you allege, center on the mere transfer of the control mechanism from the dispatcher's board to the Hobart **Telegraph** Operator. The dispute is here because of the fact that the Hobart Telegraph Operator has been permitted and/or required to assume primary responsibility for the movement of trains in the territory in question." The Carrier denies the "primary responsibility" allegation, stating all that really happened was the Hobart telegrapher added 2.1 miles to his territory which had previously been 4.3 miles. The prior operation at Hobart had never been grieved by the dispatchers. This hardly constitutes proof that the dispatchers' exclusive rights were invaded by the change.

Some observations in Award 7770 (Carter) are pertinent here:

"It is beyond question that the Carrier has the right to take advantage of technological improvements and to install them for the better and more efficient operation of the railroad. We think it equally well established that new and improved mechanical methods of performing work do not operate to take that work away from **employees** who have a right under contract to perform it.

* * *

"We are unable from this record to determine whether or not any actual duties with regard to through trains passing between two points in question have been **removed** from the dispatcher. If they have, it amounts to a violation of the Agreement, and such duties should be restored to the dispatcher; the parties should make every effort to reach agreement on this factual question."

Thus, if it can be **proven** that practices in the territory; or anywhere on the line, do in fact violate the Agreement, the issue may and should be raised again and the proof provided at all appropriate stages.

Beyond the admitted fact that a change took place, there is no proof in the record to support the claim. In effect, we are asked to adopt as fact the bald assertion that the change necessarily violates the general scope rule. This we cannot do. There is much complaint that the telegraphers lack supervision by the dispatchers, but no showing what manner or amount of supervision would be appropriate.'

Award 18144(Dorsey) involved a clerk's agreement. The following language from **that** award applies **equally** here:

"The Scope Rule is general in nature. Consequently, by application of the established case law of this Board, Petitioner bore the burden of **proving**, by **substantial** evidence of probative value, that the work involved had been performed on the property, exclusively by Clerks historically, traditionally and customarily."

Similar deficiencies of proof were encountered in Awards 7770, 13736 and 13737, where, as here, the dispatchers saw their role being undermined by changed technology. The message of those cases is that proof, not mere claims, must be presented on the property that a particular **innovation** actually usurps the Agreement.

The claim **will** be dismissed for insufficient evidence on which to base a finding.

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

Award Number 22183
Docket Number TD-21670

Page 5

The agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls

Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.