

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22247
Docket Number TD-22282

Don Hamilton, Referee

PARTIES TO DISPUTE: (American **Train** Dispatchers Association
(Norfolk and Western Railway Company

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

CLAIM #1 (TD-CLV-75-1)

(a) The Norfolk & Western Railway Company (**NYC&StL**) (hereinafter referred to as "the Carrier"), violated the effective 'schedule Agreement between the parties, Article 1(b) 2 thereof in particular **when** it permitted and/or required a person not covered by **the** scope of the controlling New York, Chicago and St. Louis Railroad Train Dispatchers' Agreement to perform work falling within such agreement on **November** 12, 1975 at **9:40** p.m.

(b) **Because of** such violation, the Carrier shall now **compensate** Claimant T. E. McBride as the senior qualified extra train dispatcher available at such time, one day's pay at the pro-rata rate applicable to trick dispatchers for **November** 12, 1975.

CLAIM #2 (TD-CON-75-10)

(a) The Norfolk & Western Railway Company (**NYC&StL**) (hereinafter referred to as "the Carrier"), violated the effective **schedule** agreement between the parties, Article 1(b) 2 thereof **in** particular, when it permitted and/or required a person not covered by the scope of the controlling New York, Chicago and St. Louis Railroad Train Dispatchers' **Agreement to perform work** falling within such agreement on December 3, 1975.

(b) **Because of** such violation, the carrier shall now compensate Claimant T. C. Campbell as the senior qualified extra train dispatcher available at such time, **one** day's pay at rate of time and one-half the applicable trick dispatchers rate for December 3, 1975.

CLAIM #3 (TD-CON-75-11)

(a) The Norfolk & Western Railway Company (**NYC&StL**) (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between the parties, Article 1(b) 2 thereof in particular, when it **permitted** and/or required a person not covered by the scope of the controlling New York, Chicago and St. Louis Railroad Train Dispatchers' Agreement, to perform work falling within such agreement on December 5, 1975.

(b) Because of such violation, the carrier shall now compensate Claimant T. C. Campbell as the senior qualified extra train dispatcher available at such time, one day's pay at the rate of the applicable trick train dispatchers rate for December 5, 1975.

cum #4 (TD-CON-75-8)

(a) The Norfolk & Western **Railway** Company (**NYC&StL**) (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between **the** parties, Article 1(b) 2 thereof, in particular, when it permitted and/or required a person not covered by the scope of the controlling New York, Chicago and St. Louis Railroad Train Dispatchers' Agreement, to perform work falling within such Agreement on December 12, 1975.

(b) Because of such violation, the carrier shall now compensate Claimant T. C. Campbell as the senior qualified extra train dispatcher available at such time, one day's pay at pro-rata rate applicable to **trick** dispatchers for December 12, 1975.

CLAIM #5 (TD-CON-75-9)

(a) The Norfolk & Western Railway Company (**NYC&StL**) (hereinafter referred to as "the Carrier"), violated the effective schedule **agreement** between the parties, Article 1(b) 2 **thereof in** particular, when it permitted and/or required a person not **covered** by the scope of the controlling New York, Chicago and St. Louis Railroad Train Dispatchers' Agreement, to perform work falling within such agreement on December 13, 1975.

(b) Because of such violation, the carrier shall now compensate Claimant T. C. Campbell **as** the senior qualified extra train dispatcher available at such time, one day's pay at the pro-rata rate applicable to trick dispatchers for December 13, 1975.

OPINION OF BOARD: The Organization identifies the specific incidents which brought about these five claims as follows:

- Claim **#1:** Yardmaster instructed Train Dispatcher to hold the westward controlled signal in stop position. He then authorized the movement of yard assignment against the current of traffic on the westward main track.
- Claim **#2:** Yardmaster authorized movement of yard crew from one main track to another at crossover.
- Claim **#3:** Yardmaster authorized movement of yard crew from one main track to another at crossover.
- Claim **#4:** Yardmaster authorized **movement** of yard crew to crossover eastward and westward main tracks.
- Claim **#5:** Yardmaster authorized **movement** of yard crew to **crossover** eastward and westward main tracks.

The Organization clearly identifies the position of each claimant at Page 10 of the ex parte submission:

"It is the position of the **Employees** that the primary responsibility provisions of Article 1(b)2 of the Scope rule in the Schedule Agreement quoted hereinabove, and upon which the claims are based, exclusively reserve primary responsibility for all main track movements to those covered by the rule, and that Carrier's actions in permitting and/or requiring persons not covered by such provisions to perform such work, is in violation thereof."

The Organization further urges consideration of general Timetable Rule 52:

"On two or more tracks, trains or engines will not cross **over** from one main track to another nor enter a main track without permission from the train dispatcher."

The Organization cites Award 16556 for the proposition that the Scope rule involved in this case on this property has been determined to be specific **in** nature.

The Carrier cites Timetable Rule 126 and urges that it clearly sets forth the authority of a **yardmaster** when on duty in Cleveland Terminal. The Carrier argues, "The only function required of the train dispatcher relative to main line *movements in Cleveland Terminal* is to protect yard movements by signal indications or otherwise upon request of the yardmaster on duty."

The Carrier argues further that **Rule** 52 is general in nature and Rule 126 is special in nature and the latter takes precedence over the former. The Organization argues that both rules are local in nature and therefore entitled to equal force and effect.

This case is indeed very local in nature. The system practices do not **govern** the Cleveland **Terminal** situation.

Within the Cleveland Terminal **the Yardmaster** is the first line Supervisor and he authorizes yard crew movements. The Train Dispatcher continues to be primarily responsible for the movement of road trains by train orders or otherwise.

Because of the peculiar situation that exists within the Cleveland Terminal, we find no violation of the Scope rule as alleged.

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.

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Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **14~~th~~** day of December **1978**.