NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24183

THIRD DIVISION Docket Number TD-24184

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Chicago and North Western Transportation Company

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

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Rule 2(b) and Rule 2(f) thereof in particular, when it permitted and/or required a person not covered by the Scope of the Train Dispatchers' Agreement to perform work falling within such Agreement on February 22, 1980.

(b) Because of such violation, the Carrier shall now compensate Claimant J. H. Catman as senior qualified and rested Train Dispatcher at such time, one days' pay at the pro rata rate applicable to Trick Train Dispatcher on February 22, 1980.

OPINION OF BOARD: The essential facts of this case are not in dispute. On February 22, 1980, Carrier performed maintenance work on the westward main track between Low Moor, Iowa and Clinton, Iowa. As a result, the eastward main track was used for all westbound and eastbound trains travelling between Low Moor and Clinton on that day. Carrier stationed an operator at the cross-over switches at both ends of the single track operations. The yardmaster at the Clinton yard advised the single track operator at Low Moor when eastbound trains could be released to pass Low Moor on the single track.

The Organization contends that the yardmaster should have communicated with the trick train dispatcher on duty, and not the Low Moor operator, concerning the movement of trains from Low Moor into the Clinton yard. By communicating directly with the operator, the Organization asserts that the yardmaster acted in violation of Rule 2(b) and 2(f) of the Agreement between the parties. Rule 2(b) and (f) read:

> "(b) DEFINITION OF TRICK TRAIN DISPATCHERS POSITIONS
> This class includes positions in which the duties of incumbents are 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.
>
> (f) WORK PRESERVATION
> The duties of the classes defined in Section (a) and (b) of this Rule 2 may not be performed by persons who are not subject to the rules of this agreement."

The Organization notes that train dispatchers are "responsible for the movement of trains" as per Rule 2(b). Yardmasters, in the Organization's view, are responsible only for movement of trains within the geographical limits of the yard. The Organization points out that the Low Moor operator was stationed 1.5 miles west of the outer limits of the Clinton yard. Thus, according to the Organization, the yardmaster had no authority to issue orders to the operator for the movement of trains clearly outside his geographical jurisdiction.

Carrier contends that the yardmaster's actions did not constitute a violation of Rule 2(b) of the Agreement. It argues that the trick train dispatcher at Boone, Iowa was primarily responsible for the movement and eastbound trains from Low Moor to Clinton. Neither the Low Moor operator nor the Clinton yardmaster usurped that authority. Thus, the communication between the yardmaster and the operator did not constitute the control of the "movement of trains by train orders," and, therefore, Rule 2(b) was not violated.

In Carrier's view , the function performed by the operator was similar to a fixed signal or flagman. The yardmaster wassimply informing the operator to allow eastbound trains to proceed once congestion at the Clinton yard had been cleared. In much the same way, fixed signals or flagmen halt trains temporarily until the track up ahead is cleared. In both sets of circumstances, the trick train dispatcher remains primarily responsible for the movement of trains, as required by Rule 2(b). Therefore, Carrier argues that the yardmaster's direct communication with the Low Moor operator did not remove the responsibility for the movement of the trains from the 'train dispatcher.

Finally, Carrier asserts that even if this Board does find that Rule 2(b) was violated, there was no need, on February 22, 1980, for a trick train dispatcher's position to be filled. It urges that there exists no basis for the Organization's claim that Claimant be compensated a day's pay.

It is disputed that trick train dispatchers are primarily responsible for the movement of trains outside railroad yards. It is equally undisputed that the Low Moor operator was stationed outside the limits of the Clinton yard. Thus, absent some compelling reason to the contrary, which we do not find, we must conclude that the trick train dispatcher should have been responsible for the movement of trains at Mile Post 9.5, where the Low Moor operator was positioned.

Moreover, the control of the "movement of trains" must include the right to authorize trains to proceed. The work "movement" means nothing if it does not mean that. Here, it is clear that the trains were allowed to proceed without the involvement of the train dispatcher, who was primarily responsible for their movement.

Carrier argued that tie Boone train dispatcher had to know when each of the eastbound trains reported at Low Moor. However, this is simply irrelevant to the dispute. This claim rests on the failure of the yardmaster to communicate with the train disgtcher before authorizing the trains to proceed into the Clinton yard. As the individual responsible for the movement of trains at Low Moor, the dispatcher had the right to receive the communication from the yardmaster and to convert it into an appropriate order to the Low Moor operator or the train crew itself, as the case may be.

Also, we note that awards cited by Carrier refer to operations within yard limits and thus are not applicable to this dispute.

Finally, we simply do not agree, as Carrier argued, that the "function performed by the yardmaster...is no different from actuating a fixed signal or flaging a train." Here, the yardmaster did not stop the trains as a fixed signal might. Rather, he expressly authorized them to proceed but, as noted above, the Train Dispatcher is primarily responsible for the movement of trains outside yard limits.

For the foregoing reasons, we conclude that Carrier violated the agreement in this case. However, with respect to an appropriate remedy, we note that Claimant's services would not have been required for a full trick if Carrier had complied with the Agreement. Accordingly, we will award Claimant a call, or two hours' compensation at the pro rata rate applicable to Trick Train Dispatchers on February 22, 1980. (see Rule 4(c)).

One procedural issue also deserves comment. The Organization asks that the claim be sustained because Carrier did not number the bottom of the pages of its submission. While we have decided this case on its merits, we remind both parties that this Board's rules and procedures must be strictly complied with. Otherwise claims will be upheld or denied, as the case may be, on the technical rather than substantive grounds.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.