

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26036

THIRD DIVISION

Docket Number MS-26036

Charlotte Gold, Referee

(J. C. Spinelli

PARTIES TO DISPUTE:

(Norfolk and Western Railway Company
(formerly Akron, Canton & Youngstown Railroad)

STATEMENT OF CLAIM:

"(a) The Akron, Canton & Youngstown Railroad Company (hereinafter referred to as 'the Carrier' or 'AC&Y') violated its Train Dispatchers' schedule working conditions Agreement, including Articles 1(a), 1(b)(4), 1(c), 1(g) and 4(h) thereof, when it required, permitted and/or delegated to persons not within the scope of said Agreement, performance of work previously performed by Train Dispatchers, on March 26th, 1981, Medina City Police, Medina, Ohio on or about 1130 pm called Herman Bell, Assistant Division Engineer Signals & Communication N&W at his home and advised him Crossing Flashers at Prospect Street Medina running continuously. H. Bell in turn called AC&Y Signalman J. Bell to repair. J. Bell completed repairs on flashers at 1:30AM March 27th, 1981 instead of calling the senior extra Train Dispatcher to perform such work.

(b) Because of said violation, the Carrier shall now compensate Claimant J. C. Spinelli one (1) day's compensation at the rate applicable to Assistant Chief-Trick Train Dispatchers, as the senior extra Train Dispatcher available at the time in paragraph (a) above."

OPINION OF BOARD: Claimant seeks one day's compensation at the applicable rate for work done by H. Bell in calling an Akron, Canton & Youngstown Railroad Company Signalman to repair Crossing Flashers in Medina, Ohio, in March 1981, that he alleges was work reserved to Train Dispatchers under the Scope of the Train Dispatchers Agreement. Carrier had abolished the third shift Train Dispatcher and the Relief Dispatcher positions and filled the position only when needed. Claimant, a Train Dispatcher, was available for the work.

Carrier contends that this Claim is barred from progression to this Board under the provisions contained in Section 2, First and Second, of the Railway Labor act, which states that "all disputes between a Carrier . . . and its . . . employees shall be considered, and, if possible, decided with all expedition . . . ". It also maintains that Petitioner is not the proper party to advance the Claim, since it should either have been brought by the American Train Dispatchers Association or a duly elected representative thereof.

Despite the length of time between the initial filing of the Claim and its progression to this Board for a final determination, we find no evidence that the Claim was abandoned. At the same time, Petitioner is the Claimant in this dispute and quite properly has access to this forum. Thus, the Claim shall be heard.

As to the merits of the case, Petitioner has the burden of proving that the work in question is generally recognized as belonging to Dispatchers by Rule or practice on a systemwide basis, to the exclusion of all others. Based upon a complete review of the record, we do not find sufficient evidence to support that factual allegation. Consequently, the Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

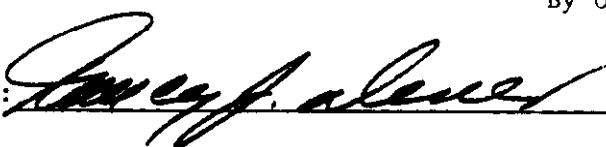
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.

LABOR MEMBER'S DISSENT
to
Award No. 26036 - Docket No. MS-26036
(Referee Gold)

The majority erred in holding there is insufficient evidence to prove the work in question is generally recognized as belonging to Dispatchers by Rule or practice, to the exclusion of all others.

The Agreement provision of consequence to this dispute states:

"Work which prior to the date of this agreement has been, and presently is being performed by the Chief Trick Train Dispatcher will continue to be performed by the Superintendent of Transportation- Chief Dispatcher or others within the scope of the schedule agreement, and will not be delegated to or performed by those not within the scope of the existing schedule agreement."

The work involved in this dispute was performed during a period when no Superintendent of Transportation-Chief Dispatcher or others within the scope of the Agreement were on duty, a third (night) shift position having been abolished. The Petitioner submitted three statements by three employees (who were not in the craft represented by the Petitioner), who attested the work was "always" done by the train dispatchers. The Carrier did not dispute the facts of the alleged violation, nor did it submit any rebuttal to the statements submitted by the Petitioner, except by denials unsupported by any evidence.

The Petitioner carried his burden of proof and the claim should have been sustained on the record. The majority's rejection of the Carrier's petty procedural arguments is commendable. But, because the claim was not sustained on the record, this Dissent is submitted.


R. J. Irvin
Labor Member