NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26255
THIRD DIVISION Docket Number TD-24655

Josef P. Sirefman, Referee'

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Soo Line Railroad Company

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

(a) The Soo Line Railroad Company (hereinafter referred to as 'the Carrier') violated the currently effective Schedule Agreement between the parties (effective March 20, 1961), Rule 1 thereof in particular, when It transferred:

(1) responsibility for the movement of trains between Hogan Ore Yard and South Wye, Hogan Ore Yard and West Wye, and Empire Jct and Soo Jct on the Eighth Subdivision of the Eastern Division, involving the supervision of train dispatchers and other similar employes, the supervision of the handling of trains in that territory, and the performance of other work related thereto, and

(2) the primary responsibility for the movement of trains between Hogan Ore Yard and South Wye, Hogan Ore Yard and West Wye. and Empire Jct and Soo Jct on the Eighth Subdivision of the Eastern Division hy train orders or otherwise (including by Centralized Traffic Control), supervision of forces employed in handling train orders and the equivalent thereof, the keeping of necessary records incident thereto and the performance of other work related thereto,

from the Carrier's train dispatchers to employes who are not train dispatchers and who were transferred from the Carrier's employment to the employment of the Lake Superior and Ishpeming Railroad for the purpose of effectuating the transfer of work from train dispatcher employes of the Carrier, as set forth above, effective 6:00 A.M., CST, Tuesday, November 7, 1978.

(b) Because of said violation the Carrier shall now compensate:

(1) the senior extra train dispatcher available a three (3) hour call for 6:00 A.M. to 8:00 A.M., CST, November 7. 197R at the rate of assistant or night chief train dispatcher and one (1) days' pay (eight hours) at the rate of assistant or night chief train dispatcher for each chief, assistant and night chief train dispatcher shift beginning after 6:01 A.M., CST, November 7, 1978 to an extra train dispatcher in successive seniority order until the violation ceases, and

(2) the senior extra train dispatcher available a three (3) hour call 6:00 A.M. to 8:00 A.M., CST, November 7, 1978 at the rate of trick train dispatcher and one (1) days' pay (eight hours) at the rate of trick train dispatcher for each trick train dispatcher shift (i.e. first, second and third shift or trick) handling the Eighth Subdivision of the Eastern Division beginning after 6:01 A.M., CST, November 7, 1978 to an extra train dispatcher in successive seniority order until the violation ceases.

(3) In the event no extra train dispatcher is available (if available thereby entitled to compensation at the straight time rate except on the sixth and/or seventh day entitled to compensation at the time and one-half rate), the amount of compensation set forth in (b) (1) and (b) (2) is claimed on behalf of a regularly assigned train dispatcher observing rest days in successive seniority order and if no regularly assigned train dispatcher observing rest days is available then on behalf of a regularly assigned train dispatcher on an overtime basis in successive seniority order at the appropriate rest day or overtime rare.

(4) eligible individual claimants entitled to the compensation claimed herein are readily identifiable on a continuing basis and shall be determined by a joint check of the Carrier's records."

OPINION OF BOARD: This Claim involves an operation under a joint venture of some duration between Soo Line Railroad Company, the Chicago & Northwestern Transportation Company (C&NW), and the Lake Superior and Ishpeming Railroad Company (LS&I). It directly arises out of the transfer of CTC equipment and control to the LS&I. The voluminous record before this Board includes details of the modifications to the trackage rights arrangement between the joint venturers, as well as various applications and appeals to the ICC and the Federal Court. The ICC disposition, in pertinent part held that:

> "Here the only modification to the previously authorized agreement is the carrier nominally designated to discharge the ministerial function of train dispatching. This function is inherent to any joint trackage operation. It will be continued to be carried out, as it has been carried out in the past, pursuant to continuance of joint trackage operations. Clearly such change should have no effect on carrier operations and services or on the relationships between the parties otherwise prescribed under 49 U.S.C. 11343. Accordingly this change does not require our approval.

> Here no employes of carrier have been shown to have been adversely affected by the nominal changes in carrier responsibility for the training dispatching function."

The decision of the ICC was subsequently affirmed by the Washington, D.C. Circuit Court of Appeals.

Carrier raises a threshold issue with respect to this Board's jurisdiction. A review of the record by this Board establishes that the dispute between the parties herein properly falls under the Agreement of May, 1936, known as the Washington Job Protection Agreement (WJPA), and that Agreement contains the mechanisms for progression of their dispute to resolution. Therefore this Claim is dismissed for lack of jurisdiction. See Second Division Awards 8619, 8286-88, 8410 and Third Division Awards 22475 and 23193. In view of this holding there is no need to consider the timeliness issue raised in the record.

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 Claim he dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.