

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26312  
Docket Number TD-25709

John B. **LaRocco**, Referee

PARTIES TO DISPUTE: ( (America" Train Dispatchers Association  
(Consolidated Rail Corporation

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

(a) The Consolidated Rail Corporation (hereinafter referred to as the 'Carrier' **or** 'Conrail') violated Rules **1(a)** and **1(b)1**, 2 and 3 of its Train Dispatchers' schedule working conditions agreement when it permitted and/or required an employee titled 'Dispatcher Assistant' to perform duties of Assistant Chief Dispatcher and Train Dispatcher in its Harrisburg, PA. office on or about April 1, 1982 and dates subsequent thereto.

(b) Because of said violation, the Carrier shall now compensate the incumbent of 7:00 AM **to** 3:00 PM - 3:00 PM to 11:00 PM and 11:00 PM to 7:00 AM positions **of** Dispatcher Assistant at the Assistant Chief Dispatcher rate of pay instead of Dispatcher Assistant rate, in the Harrisburg, Pa. office on and after July 3, 1982.

(c) In the event the incumbent did not perform duty on and after July 3, 1982, the employee performing duty on the Dispatcher Assistant position on any of these dates shall be paid at the Assistant Chief Dispatcher rate instead of Dispatcher Assistant rate.

(d) Eligible individual Claimants entitled to the compensation requested in paragraphs (b) and/or (c) above are readily ascertainable on a continuing basis from the Carrier's records and their respective identities shall be determined by a joint check thereof.

(e) The initial claimants under paragraphs (b) and (c) are:

PRB-1 - **J. McQuaide** - Incumbent R. **Hannon** Rlf. day  
PRB-2 - T. Shaw - Incumbent T. Shsw  
PRB-3 - ~~Shaw-overtime~~ Incumbent **L. F. Burgess** Rlf. day  
PRB-4 - D. Brubaker - Incumbent

Incumbents under paragraph (b) should also include PRB-4 which is Relief position with various hours of duty."

OPINION OF BOARD: While the original Claim was slightly vague, the Organization alleges that the Carrier improperly assigned Assistant Chief Dispatcher and (Trick) Train Dispatcher work to Dispatcher Assistants at Harrisburg, Pennsylvania commencing on April 1, 1982. The continuing Claim, which was filed on August 31, 1982, seeks compensation on behalf of the occupants of the four Harrisburg Dispatcher Assistant positions for the period subsequent to July 3, 1982.

According to the Organization, the Carrier directed the Dispatcher Assistants to enter certain train information into the Carrier's computerized Transportation Management System (TMS). The Organization argues that the data entry work is a function related to Assistant Chief Dispatcher work within the meaning of the last phrase of Rule 1(b)1. Also, the Organization avers that the disputed work is exclusively reserved to Trick Dispatchers by Rule 1(b)2. The latter provision expressly provides that Trick Dispatchers shall "...keep necessary records ...and ...perform related work." The Organization submitted printed and handwritten Carrier instructions ostensibly showing that Dispatcher Assistants are required to enter train and train crew information into TMS. The Organization relies on the Note to Rule 1(b) which reads:

"The foregoing shall not operate to restrict the performance of work as between the respective classes herein defined, but the duties of these classes may not be performed by officers or other employees. The compensation of employees performing the work of two or more of the classes herein defined shall be that of the highest rated class of the work which they perform."

The Organization therefore concludes that Dispatcher Assistants are entitled to the higher pay rate of either the Assistant Chief Dispatcher class or the Trick Dispatcher class whenever the Dispatcher Assistant performed work related to the duties expressly enumerated in Rules 1(b)1 and 1(b)2.

Characterizing the disputed work as copying and entering train consist data, the Carrier contends that Dispatcher Assistants may perform any duties within the ambit of the Scope Rule. Rule 1(b)3 clearly states that Dispatcher Assistant work consists of "...such duties as assigned by the Chief or Assistant Chief Train Dispatcher that are related to the duties defined in this Agreement." The Carrier argues that, by definition, Dispatcher Assistants may perform tasks related to the duties of any class. If the Board adopts the Organization's unreasonable Interpretation of Rule 1, the Dispatcher Assistant pay rate would never be applicable. Finally, the Carrier points out that, unlike Rules 1(b)1 and 1(b)2, the words, "these classes" does not appear in Rule 1(b)3. By inference, the Carrier concludes that since the Rule 1(b)Note refers to work of the respective classes, Dispatcher Assistants are not a class within the purview of the Note.

At the onset, this Board realizes that both parties have placed strained interpretations on Rule 1. Under the Carrier's interpretation, Dispatcher Assistants would be absolutely precluded from receiving the wage of a higher rated position per the Rule 1(b) Note. Thus, the Note would apply only to the classes set forth in Rules 1(b)1 and 1(b)2. While the Carrier's interpretation of the Scope Rule is too narrow, the Organization advocates such a broad interpretation of Rule 1(b) that Dispatcher Assistants would almost always be performing work within the **ambit** of Assistant Chief and Trick Dispatcher classes. Thus, the Rule 1(b) Note must be applied to Dispatcher Assistants on a case by case basis. The position of Dispatcher Assistant was designed to help the higher class employees accomplish their expressly listed duties. This Board must carefully analyze the disputed work to determine if the Dispatcher Assistants actually assumed the fundamental functions of another class (which triggers their entitlement to a higher rate) or if they merely helped the higher classes execute their duties.

Aside from the Organization's bare assertion, the record does not contain any evidence proving that Harrisburg Dispatcher Assistants took over the express duties and responsibilities of either an Assistant Chief Dispatcher or a Trick Dispatcher. Indeed, the record lacks any evidence that the Dispatcher Assistants exclusively operate any of the TMS formats. The handwritten **TMS** instructions explicitly explain that Dispatcher Assistants are to help higher rated Dispatchers with their recordkeeping duties. To prove a contract violation, the Organization **must** come forward with reliable and probative evidence to support its allegations. Third Division Award No. 25575. In this particular case, the Organization has not satisfied its burden of proof.

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.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois this 13th day of May 1987.