

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27320
Docket No. TD-27367
88-3-86-3-716

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(CSX Transportation, Inc. (former Seaboard
(System Railroad)

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

(a) The Seaboard System Railroad ('Carrier') violated

- (i) its (former L&N) Train Dispatchers' schedule working conditions Agreement, including Article I(b) 1 thereof, when, beginning during the hours of first shift on Friday, April 13th, 1984 in its Evansville, Ind. office and continuing on said shift Mondays through Fridays of each week (excluding holidays) thereafter, it permitted and/or required a person (incumbent of a Clerical position) not covered by the Scope of said Agreement to perform work related to the responsibility for the movement of trains, and the supervision of the handling of trains and the distribution of power and equipment incident thereto, which work is exclusively reserved to train dispatchers; and
- (ii) Item 1 of a Memorandum of Agreement dated January 7, 1983, when, beginning during the hours of first shift on Friday, April 13th 1984 in its Evansville, Ind. office and continuing on said shift Mondays through Fridays of each week (excluding holidays) thereafter, it permitted and/or required a person (incumbent of a Clerical position) other than a train dispatcher to input information necessary to the train dispatching operations on the Evansville Division (including former portions of the Louisville Division) into CRT units (Train Operations Monitoring System).

(b) The Carrier shall now reclassify the Clerical position referred to in paragraphs (a)(i) and (a)(ii) above in accordance with Article I(b) 1, pursuant to Article I(c) of the schedule working conditions Agreement.

(c) Because of said violation, the Carrier shall now compensate the senior extra Train Dispatcher available in the Carrier's Evansville Ind. office as of 7:00 a.m. on Friday April 13, 1984, and as of 7:00 a.m. on Mondays through Fridays, respectively, of each week (excluding holidays) thereafter, one (1) day's pay at the rate applicable to Assistant Chief Dispatchers until said violation ceases.

(d) In the event no extra Train Dispatchers are available as of 7:00 a.m. on any of the dates referred to in paragraph (c) above, the claim is made on behalf of the senior regular assigned train dispatcher available as of such time and dates.

(e) Eligible individual claimants entitled to the compensation claimed herein include, but are not limited to S. W. Elmendorf, C. S. Thomas, J. E. Dame, J. W. Wilson, T. L. Williams, J. Lambdin, Jr., J. W. Woods, C. R. Bassett, J. P. Barr, C. J. Hudson, J. O. Love, W. R. Lewis, F. X. Seidl, Jr., E. E. Simmons, R. E. Wagner, V. W. Outlaw, whose respective identities are readily ascertainable on a continuing basis from the Carrier's records and shall be determined by a joint check thereof in order to avoid the necessity of presenting a multiplicity of daily Claims."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the Brotherhood of Railway, Airline and Steamship Clerks was advised of the pendency of this dispute and filed a Submission with the Division.

Article I(b) - Scope - of the Schedule Agreement provides:

"(b) Definitions:

1. Night Chief - Assistant Chief Train Dispatcher:

These classes shall include positions in which the duties of the incumbents are to be responsible for the movement of trains on a division or other assigned territory involving the supervision of train dispatchers and other similar employes; to supervise

the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick Train Dispatchers, Relief Train Dispatchers, Extra Train Dispatchers:

These classes include 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.

* * * *

(c) Where payroll classification does not conform to the foregoing sections, anyone performing service specified therein shall be reclassified in accordance therewith."

In and around December, 1982, Carrier was in the process of installing CRT units in dispatching offices to accommodate a new Train Operations Monitoring System. The Organization served Section 6 Notices on Carrier. On January 7, 1983, in settlement of the Notices the parties signed an Agreement providing:

"1. Recognizing the Cathode Ray Tube equipment is simply an improved method of communication, Train Dispatchers, Assistant Chief Train Dispatchers and Night Chief Dispatchers may be required to use CRT Units (or similar machines) to input any information necessary pertaining to the train dispatching operations on the division. 'Any information necessary' is intended to include, but is not limited to, programs such as the Train Operations Monitoring System (TOMS) and Computer Assisted Dispatching System (CADS). Such work, when assigned to dispatching forces, will become work belonging to the Dispatchers' craft, unless such work is later eliminated. It is recognized that the right to such work does not include other work which is now, or may be assigned in the future, to other crafts."

The Organization contends the Assistant and Night Chief Train Dispatchers at Evansville performed duties related to the TOMS and CADS from the time of installation of the equipment in 1983, until April 13, 1984, at which time the duties were transferred to a Clerical position.

As originally presented the Claim cited three specific allegations of transfer of duties. This was narrowed down on the property and as the Claim comes to us only the issue of "Transmitting of Research and Resolve validations of Train Authorizations" remains.

In responding to the Claim on July 12, 1984, Carrier wrote the Office Chairman.

"The Clerical position you referred to was assigned to the Chief Dispatcher in late 1981. The duty of transmitting engine failure reports has been assigned to this position by the Chief Dispatcher since the date of assignment. This position does not transmit train authorization, but in conjunction with the Chief Dispatcher he does transmit Research and Resolve validations of train authorizations."

After conference, Carrier again declined the Claim by letter of April 1, 1986 stating inter alia:

". . . the work . . . was properly performed by the clerk assigned to assist the Chief Dispatcher and such work was performed without complaint from the ATDA until April 13, 1984 . . ."

By letter of September 1, 1986, the General Chairman denied the Clerk had handled the work prior to April 13, 1984. He attached four statements signed by regularly assigned Assistant and Night Chief Dispatchers. They were identical except for name and date and read:

"During the period of April 1983 until April 13, 1984, for all or some of this period, I was regular assigned in the Chief Dispatcher Office at Evansville, Indiana.

During this period, research and resolve work was assigned to this office and I did this work as part of my regular assigned duties.

On April 13, 1984, Research and Resolve work that was done on my shift was verbally assigned to the Chief Dispatcher Clerk Mr. R. W. Parton and he handled this report work from then until the job was abolished in 1985."

On April 20, 1979, Bulletin No. 39, had advertised the position of "Clerk to Chief Dispatcher" at Evansville. The Bulletin described the position as "New" and cited as duties:

"Handle CS44 and other reports for Chief Dispatcher's office and other Clerical duties as may be assigned by Chief Dispatcher."

In a Third Party Submission BRAC argues the work was properly assigned to Chief Dispatcher Clerk Parton. In support, it submitted a statement from Parton who contends "I worked this job from time was put on until was pulled off." He included research and resolve in a catalog of his duties.

Carrier argues the Scope Rule is general in nature and does not reserve the disputed work to the Dispatchers and therefore it is incumbent upon the Organization to show exclusivity. Contrary to Carrier we do not view this as a Scope Rule issue. It is the January 7, 1983, Agreement to which we must look.

That Agreement specifically includes the TOMS and CADS programs and declares:

"Such work, when assigned to dispatching forces, will become work belonging to the Dispatchers' craft, unless such work is later eliminated."

The four statements submitted by the Organization are evidence that the disputed work was assigned to Dispatchers from the origin of the TOMS and CADS program until April 13, 1984. Carrier did not refute these statements on the property. While Carrier does contend the language regarding "other clerical duties as may be assigned" in the 1979 bulletin covers the work, it is clear that this work did not exist in 1979 or in 1981 when Carrier states the Clerk began doing it. Based on the statements of the employees we conclude the work was assigned to Dispatchers when originated in 1983. We further conclude the work falls within the meaning of the term "such work" as used in the January 7, 1983, Agreement. Accordingly, when so assigned, it became work of the Dispatcher craft under terms of that Agreement. In our view the last sentence of Item 1 of the January 7, 1983, Agreement does not apply. When assigned to the Dispatchers it was new work, not work "which is now" assigned to other crafts.

It is sometimes easier to determine whether there has been a rule violation than it is to determine what should be done by way of remedy. This is one such case. The Organization seeks compensation of a day's pay for the Senior Extra Train Dispatcher for each day the violation took place, but the record is silent as to the amount of time required by the research and resolve work. The employee statements submitted by the Organization merely describe the work as part of their duties without details. There is no evidence of furlough, layoff or reduction in force. We realize claim is made on behalf of senior extra Train Dispatchers, but we are without a basis upon which to compute actual losses. While there are instances in which proof of violation of an Agreement carries with it proof of loss, that is not so in this case. Here the Claim as presented on the property dealt with transmitting several types of reports. When it reached us only one type of report was still at issue, nevertheless, the Claim for compensation remained constant. In the circumstances we believe we would be imposing a penalty, not enforcing an Agreement or vindicating rights, by granting requested compensation. The Organization's request to have the Clerical position reclassified is also denied.

A W A R D


Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.