

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Seaboard System Railroad (SCL)

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

CLAIM #1

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as 'the Carrier'), violated its Train Dispatchers' Schedule working conditions Agreement, including Article I (a) and (b) thereof, when, on October 6, 1982, it permitted and/or required persons other than Chief Train Dispatchers, Night Chief Dispatchers, and Assistant Chief Train Dispatchers to issue instructions directly to crew clerks instructing them to call extra train service.

(b) Because of said violation, the Carrier shall now compensate Claimant W. B. Watson one (1) day's pay at the pro-rata rate applicable to Assistant Chief Dispatchers on October 6, 1982.

CLAIM #2

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as 'the Carrier'), violated its Train Dispatchers' schedule working conditions Agreement, including Article I (a) and (b) thereof, when, on October 13, 14, 15 and 28, 1982, it permitted and/or required persons other than Chief Train Dispatchers, Night Chief Dispatchers, and Assistant Chief Train Dispatchers to issue instructions directly to crew clerks instructing them to call extra train service.

(b) Because of said violation, the Carrier shall now compensate Claimant W. B. Watson four (4) days' pay at the pro-rata rate applicable to Assistant Chief Dispatchers on October 13, 14, 15, and 28, 1982.

CLAIM #3

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as 'the Carrier'), violated its Train Dispatchers' schedule working conditions Agreement, including Article I (a) and (b) thereof, when, on November 5, 1982, it permitted and/or required persons other than Chief Train Dispatchers, Night Chief Dispatchers, and Assistant Chief Train Dispatchers to issue instructions directly to crew clerks instructing them to call extra train service.

(b) Because of said violation, the Carrier shall now compensate Claimant C. E. Mattox one (1) day's pay at the pro-rata rate applicable to Assistant Chief Dispatchers on November 5, 1982."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

The first task is to set forth the issues properly before the Board. As the Claim was appealed, issues were raised which were beyond the scope of the original Claims and at the Board, certain defenses were offered by the Carrier which went beyond those leveled on the property.

The Claims, as they were originally submitted, plainly and simply protested, as a violation of the Scope Rule, the undisputed fact that non-bargaining unit personnel issued instructions to Crew Clerks to call train crews. Thus, the issue before the Board does not involve questions as to whose decision it is when, or if, to call crews or the actual calling of the crew. Clearly, a review of the Claims as submitted originally shows that the operative facts upon which the Claims were based was the relaying of the decision to the Crew Clerks to call train crews. It is also noted that in defense of its actions the Carrier claimed only (1) that Article 1 did not grant an exclusive right to the work in question, and (2) that historically other than Train Dispatchers had ordered train crews without routing such requests through the Dispatchers. Article 1 (a) and (b) states:

"ARTICLE 1
(a) Scope

The term 'train dispatcher' as hereinafter used (and as defined in paragraph (b) of this rule) shall be understood to include chief, night chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters, and have substantially the authority of a Superintendent with respect to those and other activities. This exception shall apply to not more than one chief dispatcher on any Division.

NOTE: It is agreed that one chief dispatcher in each dispatching office is excepted from the rules of this agreement.

(b) Definitions

1. Chief Train Dispatchers
Night Chief Dispatchers
Assistant Chief Train Dispatchers

These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

After reviewing the record, as it is properly before the Board, the Claims cannot be sustained. The Scope Rule is not specific as it relates to issuing instructions to Crew Clerks to call trains. The Organization hangs its hat on the last sentence of Article 1(b). Yet, it does not specifically state that a Chief, Night Chief or Assistant Chief Dispatcher has the exclusive right to direct the Crew Clerk to call the train crew. Certainly, there is a basis to argue that this duty is reserved to the Dispatcher since it involves the supervision of other employees and may constitute "related work." However, the language of the Rule does not spell this out in clear, unambiguous and unequivocal terms. Thus, custom and practice are relevant.


On the basis of custom and practice as well, the Claims cannot be sustained. The statements submitted by employees at the location in question are not probative as to a system-wide practice. Accordingly, the Carrier is not required to have its officers give their decision to have a train crew called to the Dispatcher who, in turn, gives it to the Crew Clerk. There is nothing specific in the Rule or in system-wide history, practice or custom which would prevent the officer from instructing the Crew Clerk directly to call the train crew.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.