

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

"(a) Claim eight (8) hours compensation at the rate applicable to Operator/Clerk position at Muncie, Indiana, on each respective date beginning August 7, 1984, to the Assistant Chief Train Dispatcher(s) employed in the Muncie, Indiana, train dispatching office, account being required to perform work outside the scope of duties as provided in Article 1(a) & Article 1(b) of the August 1, 1951 schedule agreement between the American Train Dispatchers Association and the New York, Chicago & St. Louis Railroad Company.

The work referred to in the paragraph above consists of transmission of reports by means of electronic equipment from the Chief Train Dispatchers office at Muncie Indiana to various points on the railroad system, also similar transmission of various type of communications from the same office to various points throughout the railroad system including instructions to trains, instructions to personnel concerning duties and service requirements.

(b) The claimants referred to in the above paragraph include but are not limited to F. B. Cooper, D. E. Finney, R. G. Waters, H. D. Thompson, M. H. Kortman, J. E. Coleman, R. L. Rafferty, D. L. Wallace, and R. M. Bowman. Their respective identities and dates of service on the dates referred to in the beginning paragraph above and during the claim period, are readily ascertainable on a continuing basis, and shall be determined by a periodic joint check of the Carrier's records in order to avoid continuation of the filing of a multiplicity of daily claims, until such time as the Carrier:

(1) allows the compensation claimed in the beginning paragraph above on a current and continuing basis, or,

(2) removes the responsibility for performance of the described work not included in the duties described in the aforementioned agreement articles."

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 waived right of appearance at hearing thereon.

On February 28, 1990, the Third Division issued Award 28273. The Board held that the Organization's claim, dated October 5, 1984, would be sustained on procedural grounds because the Carrier had failed to deny the Organization's claim within the sixty (60) day time limit prescribed by the parties' Letter Agreement dated July 8, 1976. Because the Award also held that damages were not appropriate, as there had been "no substantive showing on the property that any employee was deprived of work or harmed in any manner," the Organization petitioned the United States District Court for the Northern District of Illinois (Eastern Division) to review Award 28273.

On May 21, 1991, following various Motions by both parties, the Court held as follows "N&W's motions to dismiss and to remand are granted, and ATDA's motion for summary judgment is denied. This case is remanded to the National Railroad Adjustment Board for further proceedings upon the merits of ATDA's claim." Accordingly, before the Board now on remand from the District Court are the merits of the ATDA's claim of October 5, 1984.

In early 1978, the Carrier removed teletype equipment from its Muncie, Indiana office (as well as at other locations) and replaced this equipment with IBM Printers and Cathode Ray Tube ("CRT") keyboard sending machines. These were installed to permit the electronic transmission of communications to other points. The Train Dispatchers were required to transmit their reports as well as instructions to trains and personnel concerning duties and service requirements by means of the CRT to various points on the system. The Train Dispatchers claim this work is outside the "scope of duties" as provided in its Agreement of August 1, 1951.

The Board has carefully reviewed the entire record and finds that the claim cannot be sustained. In so holding, we mainly note that on May 22, 1978, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRAC") (now named the Transportation Communications Union) ("TCU") filed a claim which in pertinent part reads:

"Please allow an additional eight (8) hours pay for the first, second and third trick operator-clerk positions at Muncie, Indiana 'Z' office for the senior qualified operator-clerk account work that is performed by the operator-clerk being transferred to another craft, the dispatchers. This work consisting of sending and receiving messages on machines
....

Please start this claim ... May 16, 1978 and to continue until these machines are removed from the dispatchers office and this work given back to ... BRAC ..."

The BRAC dispute was heard by Public Law Board No. 2474 which declined the claim and held that the claimed work was not exclusive to the BRAC. The Chairman of PLB No. 2474 had notified the former President of the ATDA of his right to participate in the procedures before the Board as a Third Party of Interest. In declining to participate, the former President of ATDA in pertinent part stated:

"From the description set forth in your letter and the material attached thereto, it would appear this is a dispute between NW on the one hand, and BRAC on the other hand, involving the interpretation or application of the agreements between them ..."

If my understanding of the nature of this dispute, as set forth in the preceding paragraph, is correct, please be advised that neither the ATDA nor the employees it represents are involved in such dispute between a Carrier and the representative of another craft, concerning the interpretation of agreements between the Carrier and the representative of such other craft."

Therefore, in view of the foregoing, we find that Award No. 1 of Public Law Board No. 2-74 resolved the same issue as herein and that it had res judicata effect with respect to the issue presented in this case. That Board found that the claimed work is not specifically covered by the BRAC Scope Rule and can be assigned to Train Dispatcher Positions.

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 28th day of February 1992.