

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31055
Docket No. TD-30382
95-3-92-3-127

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM:

- "(a) Beginning March 1, 1991 and continuing thereafter, the Chicago & Illinois Midland Railway Company ("Carrier" or C&IM") violated its Train Dispatchers' basic schedule agreement, including Article I thereof, by requiring Train Dispatchers filling newly established Trick Train Dispatcher positions to perform the duties previously performed by Chief and Assistant Chief Dispatchers, but refusing to compensate said Train Dispatchers at the rate applicable to Assistant Chief Dispatchers.
- (b) Because of said violations, the Carrier shall, at all times beginning March 1, 1991, compensate Trick Train Dispatchers at the rate applicable Assistant Chief Dispatchers."

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 employee 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.

In early 1991, the Carrier maintained four regularly assigned train dispatching positions: three Assistant Chief Train Dispatcher positions and one Trick Train Dispatcher position. The Chief Train Dispatcher, who was also the Superintendent, supervised the incumbents of all four positions.

Effective March 1, 1991, the Carrier abolished the three Assistant Chief Dispatcher positions and simultaneously created three Trick Train Dispatcher positions to be effective on March 1 and 3, 1991. Thus, beginning on March 3, 1991, the Carrier maintained one Chief Train Dispatcher position and four Trick Train Dispatcher positions. The Carrier no longer had any Assistant Chief Dispatcher positions.

The parties concur that the incumbents of the three new Trick Train Dispatcher positions, who were previously the incumbents of the Assistant Chief Dispatcher positions, perform exactly the same tasks and functions that they performed as Assistant Chief Dispatchers. The parties also concur that for many months, if not years, the occupants of the former Assistant Chief Dispatcher positions did not perform any supervisory duties due to the decrease in train traffic and the concomitant reduction in the number of Trick Train Dispatcher positions.

The Organization charges that the Carrier violated Article I, Sections 1 and 2 of the applicable Agreement because it improperly reclassified Assistant Chief Dispatcher positions into Trick Train Dispatcher positions simply to pay employees at the lower Trick Train Dispatcher pay rate. More specifically, the Organization alleges that the work which the Assistant Chief Dispatchers performed over a long period of time is now exclusively reserved to the Assistant Chief Dispatcher classification by custom and historical practice.

The Carrier replies that Article I, Section 1(b) expressly vests the Carrier with the discretion to establish and maintain Assistant Chief Dispatcher positions. Historically, the Carrier asserts, the primary distinction between Assistant Chief Dispatchers and Trick Train Dispatchers was that the former supervised the latter. With the substantial decrease in train dispatching work and the corresponding reduction in Trick Train Dispatching forces, the Assistant Chief Dispatchers no longer performed any supervisory functions. Therefore, the Carrier decided, based on the requirements of service, to eliminate the Assistant Chief Dispatcher positions. The Carrier contended that it implemented its decision according to the managerial prerogative expressed in Article I, Section 1(b).

To reiterate, the Carrier stresses that Article I, Section 1(b) does not inhibit the Carrier from abolishing Assistant Chief Dispatcher positions. The Carrier alternatively argues that the applicable Agreement does not contain any classification of work rule or any exclusive demarcation of work between Trick Train Dispatchers and Assistant Chief Dispatchers. Finally, the Carrier points out that when this dispute arose, the Organization filed a Section 6 notice, dated February 28, 1991, which seeks to rewrite the Rules to support the Organization's position herein. The Carrier concludes that the Section 6 notice evinces the Organization's recognition that the current Agreement language does not support this claim.

Article I, Sections 1 and 2 read:

"ARTICLE I

Section 1. This Agreement governs the hours of service and working conditions of chief, assistant chief, trick, relief and unassigned train dispatchers, subject to the exceptions noted below:

Exceptions:

(a) With the exceptions of Sections 2-a and 2-c of this Article I, and Sections 7, 8, 14 and 15 of Article II, the rules herein shall not apply to positions of Chief Dispatcher, not more than one of which may, in the sole discretion of the Management, be established or maintained in each dispatching office.

(b) Positions of Assistant Chief Dispatchers, which may, in the sole discretion of the Management, be established or maintained in each dispatching office, shall be subject to all of the rules of this Agreement, excepting that one (1) such position in each office referred to in this Agreement as selected Assistant Chief Dispatcher, may be filled, by selection of Management without regard to seniority, from among train dispatchers having sufficient seniority to retain a regular dispatching assignment in that office. Such selections may be changed from time to time with or without cause, and those selected shall not be subject to seniority displacement by others, but they shall be removed and replaced by Management's selection as specified herein, whenever they no longer have sufficient seniority to retain a regular dispatching assignment in the office.

Section 2-a. There shall be no restriction upon the duties that may be required of or performed by chief dispatchers, so long as there are maintained in that office not less than three (3) positions covered by this Agreement.

Section 2-b. There shall be no restrictions upon the duties that may be required of or performed by assistant chief dispatchers.

Section 2-c. In filling positions of chief dispatcher, preference shall be given employees holding seniority under this Agreement, but not necessarily on a seniority basis or in the same seniority district."

Assistant Chief Dispatchers historically and traditionally performed supervisory functions on this property. Over the years, as the number of Trick Train Dispatchers declined, the Assistant Chief Dispatchers performed fewer and fewer supervisory functions so that, by 1991, there was nobody left to supervise. Indeed, it is undisputed that all supervisory functions flowed from the Chief Dispatcher.

Article I, Section 2-b provided that Assistant Chief Dispatchers could perform any duties, without restriction. This provision permitted the Carrier to assign Assistant Chief Dispatchers duties usually and ordinarily performed by Trick Train Dispatchers as the supervisory functions of the Assistant Chief Dispatchers gradually dissipated. The record reflects that, by February 1991, the three remaining Assistant Chief Dispatcher positions were always performing duties normally and customarily performed by Trick Train Dispatchers and were not performing any function unique to Assistant Chief Dispatchers.

The Organization's main argument is that once the Carrier assigned a plethora of Trick Train Dispatching functions to the Assistant Chief Dispatchers, that work somehow became exclusively relegated to the classification of Assistant Chief Dispatchers. However, the Organization has not pointed to any Rule supporting its position.

Rather, Article I, Section 2-b implicitly prevents any assignment of Trick Train Dispatching work to Assistant Chief Dispatchers from becoming the exclusive province of the Assistant Chief Dispatchers. If the Organization's interpretation is taken to its logical extreme, the mere fact that Section 2-b permits the Carrier to assign any duties to the Assistant Chief Dispatchers

would mean that all Trick Train Dispatcher functions could be exclusively reserved to Assistant Chief Dispatcher positions. Instead, the purpose of Section 2-b was to provide the Carrier with flexibility in assigning duties to the Assistant Chief Dispatchers without any penalty. The provision does not mean that a particular duty, which was ordinarily performed by a Trick Train Dispatcher, fell within the exclusive ambit of the Assistant Chief Dispatcher's class merely because the duty was assigned to an Assistant Chief Dispatcher position. No matter how long the Assistant Chief Dispatcher performed such duties, the work is still properly classified as Trick Train Dispatcher work. Stated differently, the flexible assignment attributes of Section 2-b did not precipitate (even by past practice) the permanent transfer of any work assigned under Section 2-b to Assistant Chief Dispatchers. Otherwise, the Trick Train Dispatcher classification would be abrogated. Past practice is irrelevant since a Rule permits the assignment.

In the record before us, one of the Claimants listed 33 items which, from his perspective, were duties performed solely by the Assistant Chief Dispatchers. A perusal of those duties, which includes such things as power allocation; calling crews according to applicable Agreement Rules and hours of service laws; dispensing coal train loading and unloading instructions; coordinating interchanges and movements of Carrier trains on foreign lines; dispatching signal and track reports with special instructions; preparing coal train lineups; handling telephone calls, train sheets and operating a facsimile machine; and, preparing written reports, reveals that all of these tasks were duties traditionally performed by Trick Train Dispatchers. None of these tasks concern supervision.

In sum, the Assistant Chief Dispatchers were performing Trick Train Dispatcher work under the permissible provisions of Article I, Section 2-b. When the Carrier abolished those positions and reassigned the duties to Trick Train Dispatchers, there was no violation of the Agreement because these duties had not exclusively accrued to the Assistant Chief Dispatcher classification. So long as the three Trick Train Dispatcher positions herein are not performing any supervisory functions, the Carrier did not violate the Agreement.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.