

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32379
Docket No. TD-31998
97-3-94-3-354

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

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim No. 1 - Carrier file NEC-ATDA-SD-181

'a) The National Railroad Passenger Corporation (NRPC/Amtrak) violated the currently effective Agreement between NRPC/Amtrak and the American Train Dispatchers Association (ATDA), specifically Rule 1 - SCOPE (b) 1. Definition of Chief, Assistant Chief and Night Chief Dispatchers, when it allowed an Employee not covered by said SCOPE Agreement to order a road crew for an equipment extra which reported at 1:00 AM Sunday, March 7, 1993, at Boston Engine Terminal in Charlestown, Mass. NRPC/Amtrak also violated longstanding custom, practice and precedent is doing so.

b) Amtrak shall now compensate the senior qualified and rested Extra Train Dispatcher, J. A. Parker 8 hours at the pro-rata rate for Assistant Chief Train Dispatcher.'

Claim No. 2 - Carrier file NEC-ATDA-SD-182

'a) The National Railroad Passenger Corporation (NRPC/Amtrak) violated the currently effective Agreement between NRPC/Amtrak and the American Train Dispatchers Association (ATDA), specifically Rule 1 - SCOPE (b) 1. Definition of Chief, Assistant Chief and Night Chief Dispatchers, when it allowed an Employee not covered by said Agreement to order a road crew for an equipment extra which reported at 4:50 AM

Sunday, March 14, 1993, at Boston Engine Terminal in Charlestown, Mass. NRPC/Amtrak also violated longstanding custom, practice and precedent in doing so.

b) Amtrak shall now compensate the senior qualified and rested regularly assigned Train Dispatcher on his rest day, M. W. Beauregard, 8 hours at the time and one-half rate for Assistant Chief Train Dispatcher.”

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 were given due notice of hearing thereon.

On two occasions, March 7 and March 14, 1993, the on-duty Carrier Supervisor of Operations, an individual not assigned under the provisions of the Train Dispatcher Agreement, ordered an extra train crew to report to the Boston Engine Terminal. Normally the ordering of train crews is performed by the appropriate Assistant Chief Train Dispatcher. The Organization filed a claim contending that the activity of ordering train crews is work reserved to Chief Train Dispatchers by its Scope Rule. Carrier argued that the Organization's Scope Rule does not reserve this work exclusively to Dispatchers and also that the task involved in the claim was *de minimus*.

In this record it is manifestly clear that the activity of ordering a train crew, as performed by the Supervisor of Operations on March 7 and March 14, 1993, is work that is normally, customarily, and routinely performed by Assistant Chief Train Dispatchers working under the Agreement. Supervisors are not privileged to take it upon themselves to perform tasks of Assistant Chief Train Dispatchers, even if it is of

a de minimus nature and was merely a response to a situation that needed immediate attention. The Agreement was violated. The claims will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of December 1997.

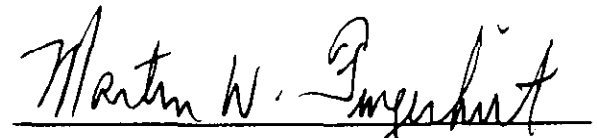
CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARD 32379, DOCKET TD-31998
(Referee Fletcher)


We dissent to this ill-founded and excessive Award. The Majority obviously chose to overlook the burden of proof required by the Petitioner, which it failed to shoulder on the property. The Scope Rule does not give an exclusive right to the Assistant Chief Dispatcher in the calling of crews, relief or otherwise. Nor does the Rule provide for an eight hour penalty payment. The fact of the matter is that the Assistant Chief Dispatcher does not call crews. As established in the record, since 1983 crews have been called by others including the Crew Management Service Clerks (represented by TCU) then headquartered in Philadelphia, Pennsylvania. Since 1987, in the MBTA service, crews have been called by local TCU-represented Crew Dispatchers and their supervisors.

Further, the Organization throughout its on-property handling, intermingled its references to the responsibility of those in the classifications of Train Dispatcher (a separate classification), Chief (a fully excepted management position), Assistant Chief Dispatcher, and Night Chief as if they were all one equal class, when they are clearly discrete and separate. The Scope Rule gives one definition for the Chief, Assistant Chief and Night Chief position. However, the Chief position by the language of the same Rule is an exempt position. It is contradictory then to ascribe exclusive work to an agreement covered position of Assistant Chief when the clear unadulterated language of the Rule incorporates others. There is simply no evidence in the record before the Board that the work in question had ever been exclusively reserved to the Assistant Chief Dispatcher position.

The Board's decision in this case is palpably erroneous. We trust the Carrier will place no precedential value in the findings, which were obviously not made on the facts of the case.


Michael C. Lesnik


Martin W. Fingerhut


Paul V. Varga

January 29, 1998