

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35309
Docket No. TD-34960
01-3-98-3-687**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

- “(A). CSX Transportation, Inc. (Carrier or CSXT) violated its Train Dispatchers basic schedule agreement applicable in the Jacksonville Centralized Train Dispatching Center (JCTDC) including but not limited to Article 1 Scope, Section 2 and the NOTE: thereto and its own operating rules manual therefore permitted and/or requiring employees not covered by the scope of said agreement and operating rules manual to enter 707 Conditional Stop requests on July 31, August 3, 4, 11, 12, 13, 14, 17, 18, 21, 24 & 25 and September 1, 2, 3, & 4 of 1997 into the CADS system without the knowledge, consent, or agreement of the Train Dispatchers.**
- (B). Because of said violation CSXT shall now:**
- (1) compensate Claimant R. L. Dillon ID#161650 sixteen days pay the proper rate of pay applicable at Trick Train Dispatchers rate in the JCTDC for said violation.**
 - (2) treat such date as a work day for the purpose of eligibility for sick leave benefits which may otherwise be applicable, and as a day on which compensated service was performed for vacation benefits.”**

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.

The Claimant was employed at the Jacksonville Centralized Train Dispatching Center (JCTDC) on July 31, August 3, 4, 11, 12, 13, 14, 17, 18, 21, 24, 25, September 1, 2, 3, and 4, 1997.

On September 5, 1997, the Organization filed a claim arguing that the Carrier violated Article 1 Scope, Section 2, and its own Operating Rules Book when it allowed employees not covered by the Scope Rule to enter 707 conditional stop requests into the Computer Assisted Dispatching System (CADS) on the above-referenced dates without the knowledge, consent, or agreement of the Organization. In addition, the Organization contends that because the Carrier allowed other employees to enter train messages into the CADS, it violated the Federal Hours of Service Act. The Organization argues that the work in question is strictly reserved for Train Dispatchers. Hence, the Organization requests that the Carrier be required to pay the Claimant 16 days' pay at the proper rate and that said dates be considered as work days for sick leave and vacation benefits. The Organization contends that the duties of Dispatchers may not be performed by officers or other employees of the Carrier. The Organization argues that Dispatchers are primarily responsible for the movement of trains by train orders or otherwise, the supervision of forces employed in the handling of train orders, the maintenance of records, and the performance of related work. The Organization also maintains that the Carrier violated the parties' Agreement when it issued Procedural Instruction No. 11, whereby Dispatchers were informed that effective July 28, 1997 Form W train messages would no longer appear in the suspense file for their review. As a result, the Organization contends that the Carrier compromised the safety of its employees and

equipment when it prevented Dispatchers from reviewing train messages for errors before they were put into the system. In addition, the Organization argues that the Carrier's reliance on Award 1 of Public Law Board No. 5705 as support for its denial of the Organization's claim is in error in that the situation in that case differs whereby the Dispatchers in this dispute are not involved in the decisional authority that existed in that case. The Organization asserts that in the prior case, the Carrier acknowledged that the Dispatcher still determined whether the request for track authority was or was not to be approved. The Organization contends that in this case, the Dispatcher's electronic signal no longer impacts on the issuance of train orders, notices, etc., because now that function is handled directly by other Carrier employees who are not covered by the Scope Rule. The Organization argues that no technological improvements or changes occurred in the instant case; rather the Train Dispatcher was bypassed in the process of granting or not granting 707 work authorities.

As noted above, the Carrier cited Award 1 of Public Law Board No. 5705 as a reason for its denial of the Organization's claim. The Carrier cited Appendix No. 13 of the Agreement as the basis for the technological change that allowed it to make the changes covered by that case. The Carrier argues that a technological change in this case now allows the 707 authority to pass directly into the CADS. The Carrier maintains that it eliminated an inefficient duplication of work and changed the reporting format from paper to computer terminal. The Carrier argues that it has the managerial prerogative to introduce technological changes that eliminate work and that the only instance in which this is not the case is where the Carrier has restricted or limited this prerogative by agreement, which is not the case here. The Carrier contends that the change that took place is totally one contained in its computer system which no longer requires Train Dispatchers to call up requests and review them before passing them to the CADS. The Carrier maintains that this change has not resulted in the elimination of any Dispatcher position, nor has any Dispatcher been laid off as a result of the change. The Carrier contends that the work of reviewing the work authority requests from the Engineering Department was eliminated due to technological improvements and advancements to its computer system and is not work performed by any other craft, but by the computer system. In other words, the Carrier argues that the decision to approve the work authority now takes place automatically and the work authority is generated by the CADS; however, the issuance of train orders and train messages remains solely the function of Train Dispatchers. The Carrier emphasizes that no other craft is performing any additional function previously performed by a member of the Train Dispatcher's craft. Therefore, the Carrier argues that because no Agreement

violation occurred, there is no basis for the Organization's claim. In addition, the Carrier contends that the Organization's reference to the Operating Rules Book and the Hours of Service Act are not instruments subject to negotiation and are not subject to being the basis for a penalty claim.

The Carrier argues that it is improper for the Organization to seek sick leave and vacation benefits in its claim because the Claimant was on duty on the dates in question and lost no pay as a result of the alleged violation of the Agreement. The Carrier contends that if damages are to be awarded, they should be limited to the Claimant's actual monetary loss.

The Board reviewed the extensive and complicated record in this case, and we must find that the Carrier did not violate the Agreement when it eliminated the Train Dispatcher's role in creating these work authorities. The Board finds that the Carrier has the managerial prerogative to introduce technological changes as new developments in technology take place. Appendix 13 states the following:

“. . . Such work, when assigned to dispatching forces, will become work belonging to the Dispatcher's craft, unless such work is later eliminated.”

The Board agrees with the Carrier's argument that the parties who negotiated the Rule in question recognized that technology would continue to evolve and lead to the elimination of certain jobs.

Moreover, it was the Organization in this case that had the burden of proof to show a Rule or a past practice that would require the Carrier to continue to use Train Dispatchers in the creation of work authorities. The Organization has not met that burden of proof. There was no showing that any other employee took over any work that was previously performed by Train Dispatchers. The record is clear that technology simply eliminated some of the work that was previously performed by members of the Organization. The Carrier is correct that the Agreement contains no restriction on the Carrier's right to eliminate work when it implements more advanced technology. The Carrier cited numerous Awards that support the principle that elimination of unnecessary work is not a violation of the Agreement. Moreover, there has been no transfer of work in this case.

Previously, the Engineering Department employee was required by Operating Rule 707 to give the necessary information contained in the work authority that was in handwritten form and then duplicated on a CRT by a Train Dispatcher. The Carrier eliminated the inefficient duplication of work and changed the Engineering Department format from paper to a computer terminal. Previously, a Train Dispatcher reviewed and approved the request and passed it on to the dispatching system. The current case involves the elimination of the Train Dispatcher's role of reviewing, approving and passing on the work authority request. We find that this elimination of a clerical step is not a Scope Rule violation. We also find that there is nothing unsafe about what occurred here.

It is unfortunate that many technological changes lead to the elimination of certain jobs or job responsibilities. Certainly, that has been the case here. However, the Board must determine whether or not there was a Rule violation or some violation of past practice by the Carrier in the elimination of these job duties. As stated above, we cannot find that violation. Therefore, the claim must be denied.

AWARD

Claim denied.

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 24th day of January, 2001.