

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35428
Docket No. TD-34758
01-3-98-3-419**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 I Scope, Section 2, the NOTE: and item (d) thereto on or about 0700 hours on October 18, 1996 and therefore permitted and/or required employees not covered by the scope of said agreement to exercise primary responsibility for the movement of trains when said employees were permitted by the installation of a means by which to block the main tracks at Clifton Forge, VA without consulting with or involving the Train Dispatchers on the AM Console.

(B) Because of said violation CSXT shall now:

- (1) compensate Claimants one days pay at the proper rate of pay applicable at Trick Train Dispatchers rate in the JCTDC for said violation beginning with the first shift October 18, 1996 and continuing on each subsequent shift and date thereafter until such violation ceases.**
- (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.**

- (3) ascertain from the Carrier's records of payroll by joint check the names and rates of pay for those who will be compensated at the resolution of this claim so as to avoid the necessity of filing a multiplicity of daily claims."

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.

In 1996, the Carrier installed a fuel pad on the mainline at Clifton Forge, Virginia. Clifton Forge is located on a heavily traveled east-west coal route. Fueling engines on the mainline at Clifton Forge reduces the transit times for these trains. An absolute signal is located on both ends of the fueling facility. This absolute signal is controlled by the Train Dispatcher at the Carrier's Jacksonville Centralized Train Dispatching Center. When an engine consist requires fueling, the Train Dispatcher lines the train through to the fueling facility.

After the engines are spotted on the fueling pad, Mechanical Department forces at Clifton Forge switch on a blue flag signal and a Train Dispatcher at the AM console in Jacksonville changes the signal indication to stop. Federal law requires that a blue flag be displayed whenever workmen other than train crews are on, under, or between rolling equipment on a main track.

When Mechanical Department forces at Clifton Forge contact the Train Dispatcher, an arrow is displayed on the Train Dispatcher's console above the "BF" field. When the arrow is red, the local forces at Clifton Forge are in the clear and the train is not yet in position for fueling. When the arrow changes to white and begins to

flash, the train is in position for fueling and local Mechanical Department forces are requesting that the mainline signal aspect be changed to red because blue flag protection is being provided. Once the blue flag signal is activated, the arrow on the Train Dispatcher's console changes to green. After the fueling is completed, the local Mechanical Department forces then change the arrow indication back to red, advising the Train Dispatcher that the blue flag protection has been removed.

Mechanical Department forces previously contacted the Train Dispatcher at Jacksonville to request that the mainline signal be changed to stop. Now this is done electronically through a computer terminal.

On November 5, 1996, the Organization filed a claim on behalf of unnamed Claimants contending that the Carrier permitted and/or required employees not covered by the scope of its January 9, 1988 Agreement with the Carrier to exercise primary responsibility for the movement of trains by blocking the main tracks at Clifton Forge without consulting with or involving the Train Dispatchers on the AM console at Jacksonville.

The Carrier denied the claim maintaining that it should be dismissed due to the Organization's failure to identify employees who were adversely affected by the purported violation of the Agreement. Moreover, according to the Carrier, no one other than Train Dispatchers controlled the movement on the main tracks at Clifton Forge, Virginia.

The burden rests with the Organization to prove by substantial evidence that employees not covered by the scope of its Agreement with the Carrier are exercising primary responsibility for the movement of trains on the main tracks at Clifton Forge, Virginia. It has not sustained the burden imposed on it, in the Board's opinion.

The Organization contends that Mechanical Department employees who work at the Clifton Forge fueling facility are operating Traffic Control System (TCS) machines, but the Board respectfully disagrees. There simply is no TCS machine at Clifton Forge. Rather, there is a computer terminal there that allows Mechanical Department forces at the fueling facility to request a Train Dispatcher in Jacksonville to change the signal on the mainline to red while an engine consist is being fueled. This machine cannot affect signals that control the movement of trains on the mainline. The absolute signal on both ends of the fueling facility is still controlled by the Train Dispatcher on the AM

console at Jacksonville. No one other than Train Dispatchers has the ability to control the movement of trains on the mainline at Clifton Forge, Virginia.

The Organization also alleges that the blue flag protection blocking device is being improperly applied by Yardmasters at Clifton Forge. However, employees other than Train Dispatchers have always controlled the placement of blue flags and blue signals throughout the Carrier's property. Train Dispatchers at the AM console in Jacksonville are still controlling the absolute signal at the Clifton Forge fueling facility after Mechanical Department forces there request them to change the signal to stop during fueling.

For all the foregoing reasons, the Board concludes that the Carrier did not permit or require employees not covered by the scope of the parties' Agreement to exercise primary responsibility for the movement of trains on the main tracks at Clifton Forge, Virginia. Therefore, it is unnecessary to address whether the claim presented by the Organization is procedurally defective due to its failure to identify an employee(s) who was adversely affected by the reputed violation of the Agreement.

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 26th day of April, 2001.