

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35458
Docket No. TD-35427
00-3-99-3-322**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(American Train Dispatchers Department/
International 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, (2), NOTE: thereto on or about 0700 hours April 22, 1998 and therefore permitted and or required employees of The Indiana Railroad Company, not covered by the scope of said agreement to exercise primary responsibility of creating train sheets for trains Z468 and Z398 daily. With the installation of electronic equipment at their Bloomington and Palestine Offices to receive Train Messages and Bulletins for train crews. These messages and bulletins are being routed throughout the system and elsewhere without the knowledge and consent of the Train Dispatcher.

(B). Because of said violation Carrier shall now:

- (1) Compensate claimants 1 days pay at the proper rate of pay applicable at the Trick Train Dispatchers rate in the (JCTDC) of Two Hundred Seven Dollars and Twenty-Six Cents, (\$207.26) to the senior Train Dispatcher respectfully available on each shift for said violation beginning with the first shift on April 22, 1998 and continuing on each subsequent shift and date thereafter until such violation ceases.**

- (2) Ascertain from the Carrier's records of payroll by a joint check the names of 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.

On May 8, 1997, the Indiana Railroad Company issued a memorandum stating that it had received permission and necessary equipment to enable its employees to pull its own orders and bulletins. Commencing in April 1998 Indiana Railroad Company employees began doing so when accessing CSXT trackage for a portion of their route.

The Organization contends that the provisions of Article 1(b) 2 (SCOPE) guarantee the work in question to CSXT employees covered thereunder. The Organization cites numerous Awards in support of its contention that the language of the Agreement must be strictly construed. The Carrier in defense states that access to the information input by the covered CSXT employees represents a technological change and not a diminution of the job duties of the covered employees. It also contends that the work in question is de minimus.

The section of the Scope Rule relied upon provides in part "these classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise. . . ." The information accessed is input by the covered employees and is thereafter relied upon by Indiana Railroad Company

employees. The use of the word "primarily" in the Rule makes clear that the Rule is not intended to be exclusive. This determination is made taking into consideration the numerous Awards cited by the Organization. The argument made by the Carrier that the change made was technological, carries great force. Public Law Board No. 5705, Award 1, which was cited by the Carrier, dealt with a similar situation between the parties to this dispute, and the rationale with regard to technological advances is persuasive. The issue of de minimus, need not be addressed at this time. The claim of the Organization is 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 22nd day of May, 2001.

Labor Member's Dissent
To Third Division Award No. 35458
Docket No. TD-35427
(Referee Donald W. Cohen)

Regardless of what the Majority says in its decision, this was not a case concerning a technological advance. Rather, this was a transfer of work.

There is no doubt arbitral precedent concerning the elimination of work through technological advances. However, this arbitral precedent requires the work in question be eliminated through technology. Public Law Board 5705, Award No. 1, referenced by the Majority, found the following:

“Carrier’s 1992 technological introduction of the ‘TMWO’ computer system now eliminated the dispatcher’s necessity to transpose or replicate certain information from the request for work authority.... The work not now performed by the dispatcher disappeared because of a technological change.... The dispatcher’s function of replicating the information on the 707 request...was simply eliminated by the Carrier’s 1992 introduction of the newly designed ‘TMWO’ computer system....” (Underscoring added.)

In this case, there was no elimination of work. The Carrier simply set a computer up and allowed a non-train dispatcher employee to do the same exact work the train dispatchers were and are still doing. Apparently the Majority got confused with what the arbitral precedent concerning technological advances is.

To add to its apparent confusion, the Majority, even after saying it considered the numerous Awards cited by the Organization, found that the use of the word “primarily” in the Scope Rule is not intended to be exclusive.

First, the definition of “primarily” is “chiefly, principally”. Therefore, when the Scope Rule states that “these classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise” it means that is their principle duty.

Second, the Majority says it considered the numerous Awards cited by the Organization in making its determinations. The following Awards, which were some of those cited by the Organization, dealt with the same Scope Rule language and found:

Third Division Award No. 5368 (adopted June 20, 1951) – “There can be no question under the agreement that the train dispatcher has primary responsibility for the movement of trains, and the control operator is secondarily responsible for such movements under the supervision of the train dispatcher.”

Third Division Award No. 7575 (adopted December 19, 1956) – “Whether or not a Train Dispatcher can be responsible for the movement preceding under a ‘flag’ is a question not before us. What we are concerned with is solely, was this move initially Train Dispatcher’s work under the scope rule. We find that it was regardless of the method finally employed to make the move.”

Labor Member's Dissent
To Third Division Award No. 35458
Docket No. TD-35427
(Referee Donald W. Cohen)

Third Division Award No. 7628 (Adopted January 29, 1957) – “We are of the opinion and so find and hold that Article 1 (c) of the effective agreement...has the effect of delegating primary responsibility for train movements of this type to Train Dispatchers, otherwise the designation of such responsibility as covered in the expression ‘by train orders’ or otherwise would be rendered meaningless.”

Third Division Award No. 14385 (Adopted May 5, 1966) – “The Scope Rule grants the exclusive duty of being primarily responsible for the movement of trains by train orders, or otherwise.”

Third Division Award No. 16556 (Adopted August 2, 1968) – “The Dispatchers argue that this is a specific Scope Rule as distinguished from a general type Scope Rule, that as such it describes the work belonging to the Dispatcher and does not merely list the positions etc. as we so often see in many general Scope Rules... We agree with the Dispatches in this case. The Scope Rule is clear, precise and unambiguous. The language is not susceptible to mis-construction.”

Public Law Board No. 629, Award No. 1 (Adopted July 20, 1972) – “The issues raised in this case have all been adjudicated in favor of the Association and against the Carrier’s position in closely similar disputes involving these same parties presented to various neutrals sitting with the Third Division. See Third Division Awards 6885, 7575, 7628, 9846, and 16038. Once an issue has been decided and established by numerous Awards involving the same parties over a period of years, as in the present situation, it should not be continually relitigated and no neutral could reasonably upset the established decisions without branding them erroneous. This neutral has carefully reviewed the above Awards and does not so find.”

Third Division Award No. 26073 (Adopted July 8, 1986) – “A careful review of the instant case indicates that the Scope Rule herein disputed is a specific Rule listing the nature of work specified to a position and therefore not requiring a showing of exclusivity. The work herein assigned to Trick Train Dispatchers is the movement of trains...”

Third Division Award No. 26593 (Adopted October 27, 1987) – “At issue here is whether the provisions of Article 1 b.(2) of the controlling Agreement exclusively reserve to Train Dispatchers...the duty of being primarily responsible for the movement of trains... The Organization contends that...the primary responsibility for the issuance of instructions authorizing the movement of trains, by train orders or otherwise, is exclusively the Dispatcher’s duty... After a thorough review of the record in this case and the numerous precedent Awards cited by the parties, we are persuaded that the Organization’s position is meritorious. The Scope Rule in this Agreement, unlike those of other classes and crafts, is clear, precise and

Labor Member's Dissent
To Third Division Award No. 35458
Docket No. TD-35427
(Referee Donald W. Cohen)

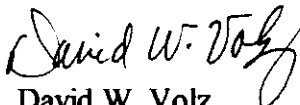
unambiguous in defining and describing the work of the affected employees. Language identical to that included in Article 1 b. (2). relied upon in the instant dispute has consistently been interpreted as exclusively reserving primary responsibility for the movement of trains to Trick Train Dispatchers.

Third Division Award No. 27109 (Adopted May 17, 1988) – “This Scope Rule is specific as to these facts inasmuch as it covers positions primarily responsible for the movement of trains ‘...by train orders, or otherwise...’ This is the key phrase and so long as trains on the tracks...are being controlled by train order or otherwise, the work is reserved to the Dispatchers.”

Third Division Award No. 30089 (Adopted March 15, 1994) – “This is not an issue of first impression. Third Division Award 27109 considered a similar dispute under a Dispatchers’ Scope Rule which uses the same language; i.e., ‘primarily responsible for the movement of trains by train orders, or otherwise.’... In the instant case, it is not the changing of the nature of the track that constitutes the violation of the Agreement, but, rather, the transfer of authority to the yardmaster.”

Clearly, the Majority’s determination in this case is contrary to 50 years of arbitration involving the train dispatchers’ Scope Rule. Therefore, this Award is palpably erroneous and holds no value as precedent.

I dissent to this decision.


David W. Volz
Labor Member