

**\*\*CORRECTED\*\***

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37523  
Docket No. TD-37383  
05-3-02-3-332**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(American Train Dispatchers Association**  
**(Canadian National Railway (Grand Trunk District)**

**STATEMENT OF CLAIM:**

**“Claim of the ATDD/BLE:**

- A. The Midwest Division of the CN/IC Railroad Company (hereinafter referred to as “The Carrier”), violated and continues to violate the currently effective Agreement between the parties, Article 1(b)(3)’**

**‘Trick Train Dispatchers: This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.’**

**Thereof in particular, when it arbitrarily transferred primary responsibility and control of the movement of trains over that portion of its Mount Clemens Subdivision on the Southward Service Track between Nolan, Mileage Ten (10) and Forest Lawn, Mileage Seven (7) from Train Dispatchers in the Troy, Michigan train dispatching office, to the jurisdiction and**

control of the BOC Yardmaster not within the scope of said Agreement effective 1200 hours October 1, 2000 by Timetable No. 1.

Method of Operation, Rule 520 applies from Nolan to Milwaukee Jct. New Southward Service Track (Old Westward Main Track) extends from Nolan to Milwaukee Jct. Contact BOC Yardmaster before using the Northward and Southward Service Tracks between MP 10 and MP 4.6

- B. Because of said violations, the Carrier shall now compensate the senior qualified train dispatcher who is available due to the observance of his/her weekly rest days one day's pay at the punitive rate of trick train dispatcher for each of the first, second and third trick train dispatcher assignments for which they are respectively available until said violation ceases.
- C. In the event no qualified train dispatchers are available on any trick or tricks on any of the days in the period described above, then and in such event Carrier shall compensate the senior unqualified train dispatcher who is available due to the observance of his/her weekly rest days, one (1) day's compensation at the punitive rate of trick train dispatcher assignments for which they are respectively available until violation ceases.
- D. Eligible individual claimants entitled to compensation claimed herein are readily indefinable and shall be determined by joint check of the Carrier's records."

**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.

As Third Party in Interest, the United Transportation Union – Yardmasters Department was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

According to the Organization in the claim, effective 1200 hours October 1, 2000, as reflected in a timetable change, the Carrier permitted and/or required non-scope covered BOC (Buick-Oldsmobile-Cadillac) Yardmasters to exercise primary responsibility for the movement of trains on the Southward Service Track (the Old Western Main Track) between Nolan and Forest Lawn on the Mount Clemens Subdivision. The Organization argues that prior to that change, scope covered Trick Train Dispatchers were responsible for the movement of trains between those locations. According to the Organization, the change constituted an improper transfer of work from scope covered Dispatchers to non-scope covered Yardmasters.

According to the Carrier, the disputed area is a heavy industrial switching area in Detroit, Michigan. Further, according to the Carrier, prior to the timetable change, the Dispatchers' function in the disputed area was to merely relay information from the train crews to the Yardmasters; the Yardmasters gave certain instructions to the Dispatchers; and the Dispatchers, in turn, relayed that information to the train crews. When the change took effect, the middleman information relay function performed by the Dispatchers was eliminated and the train crews communicated directly with the Yardmasters. Further, the Carrier states that the procedures involving these kinds of communications have changed back and forth in that train crews who have received instructions through direct communication with Dispatchers have subsequently been assigned to receive

instructions through direct communication with Yardmasters and vice versa - i.e., train crews who have received instructions through direct communications with Yardmasters have subsequently been assigned to receive instructions through direct communication with Dispatchers. The Carrier disputes the Organization's position that the elimination of the middleman function in this dispute constituted an improper transfer of scope covered work and further disputes that any Dispatcher was harmed as a result.

The Scope Rule provides:

**"(b) - Definitions**

1. **Trick Train Dispatchers:** This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

\* \* \*

**NOTE:** The parties understand that work covered by the scope of this agreement does not include the supervision or operation of trains over territory where no dispatcher authorization is required (such as - within yard limits, on industrial tracks, yard tracks and spur tracks)."

The burden is on the Organization to demonstrate a violation of the Agreement and to prove all necessary elements of its claim. Given the status of the record in this particular dispute, the Organization has not carried that burden. First, the Scope Rule protects Dispatchers' duties which are "primarily responsible for the movement of trains" and the specific work in dispute appears to be the relaying of information - i.e., middleman duties - between train crews and Yardmasters. Those relay-type functions are not duties which are "primarily responsible for the movement of trains" (Emphasis added.) Second, if there is a dispute over the type of instructions given (i.e., relay-type as urged by the Carrier or

direction of the trains as urged by the Organization), then the facts in the record are in irreconcilable dispute. In such cases, because the burden is on the Organization to demonstrate all of the necessary elements of its claim, the dispute in facts cannot be resolved in the Organization's favor. Third, the note to the Scope Rule further weakens the Organization's position - i.e., that "[t]he parties understand that work covered by the scope of this Agreement does not include the supervision or operation of trains over territory where no Dispatcher authorization is required (such as - within yard limits, on industrial tracks, yard tracks and spur tracks)." The area of operation appears to fall under the umbrella of that note.

The Awards cited by the Organization do not change the result. For example, in Third Division Award 26593 the yard limits were extended to include a disputed area which was taken from Dispatchers and given to Yardmasters to control. That is not this case. No yard limits were extended here. In Third Division Award 27109 the Board noted that "[t]he determining factor is where there is a train - outside yard limits where a Yardmaster has never been employed - which requires direction and control." Here, it appears through the Carrier's position that Yardmasters have been employed in the past to direct and control the trains in the disputed area. Similarly, in Third Division Award 27344, the facts show that the disputed area was not "previously under the control of Yardmasters." But again, according to the Carrier which has not been sufficiently refuted by the Organization, the procedures involving communications have changed back and forth between train crews having first contact with Dispatchers and first contact with Yardmasters. And, in Third Division Award 30089 a violation was found because "the Carrier effectively removed responsibility for the movement of trains . . ." from Dispatchers and gave it to Yardmasters. But again, in this case the Organization has not sufficiently refuted the Carrier's position that all the Dispatchers were doing was relaying information from the Yardmasters who were ultimately responsible for the movement of the trains in the disputed area. Award 30089 focused upon the ". . . transfer of authority. . . ." Here, the Organization has not refuted the Carrier's showing that the authority was ultimately with the Yardmasters with the Dispatchers acting as the conduit.

Based on the above, the Organization has not carried its burden. The claim shall be denied.

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**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 23rd day of June 2005.**