

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That the work of directing the movement of trains and power in the Buffalo Terminal be restored to train dispatchers, who formerly performed this work.

(b) That three (3) train dispatchers, who would have been entitled to the work, be paid, at train dispatcher's rate of pay, for each 24 hour period, beginning January 1, 1942, and until the work is restored to them.

EMPLOYES' STATEMENT OF FACTS: The Buffalo Terminal of the Delaware, Lackawanna and Western Railroad includes the main line from Yard Limit Board, located about one and one-half miles east of East Buffalo Yard office to Erie Street coal dock about one-half mile west of Buffalo passenger station, a distance of approximately seven and one-half miles, and the Black Rock Branch, extending from East Buffalo Yard office to Black Rock, a distance of approximately nine miles. This territory is all double track with the exception of that portion extending from Buffalo passenger station to Erie Street coal dock, which is single track.

The main tracks on the Black Rock Branch are equipped with Automatic Block signals. The Main Line, from Yard limit board to Buffalo passenger station is equipped with automatic block signals and has interlocking plants located at the west end of East Buffalo yard; at P. R. R. Junction, about two miles west of East Buffalo; at Buffalo River Draw Bridge, about two miles east of Buffalo passenger station and at Michigan Avenue Tower at East end of Buffalo passenger station. The single track between Buffalo passenger station and Erie Street coal dock is not equipped with signals, except to enter and leave at Michigan Avenue Tower.

Foreign line interchanges are located as follows: Pere Marquette and Erie immediately adjacent to East Bound yard at East Buffalo; Lehigh Valley about one mile west of East Buffalo; Pennsylvania about two miles west of East Buffalo. Baltimore & Ohio; Buffalo Creek and South Buffalo at Abbott Road, about three miles west of East Buffalo. Nickel Plate and New York central Lines West about three and one half miles west of East Buffalo. The Black Rock Branch connects with the Wabash, Canadian National, Michigan Central and New York Central at Black Rock.

The use of these tracks by trains and engines is as follows: Main Line, between Buffalo passenger station and East Buffalo by through passenger trains and transfer engines; Baltimore and Ohio passenger trains between Abbott Road and Buffalo passenger station; Nickel Plate passenger trains between Nickel Plate Junction and Buffalo passenger station; Pennsylvania freight trains between P. R. R. Junction and East Buffalo enroute to and from Black Rock via Black Rock Branch. Black Rock Branch is used by

"A system of tracks within definite limits provided for the making up of trains, storing of cars and other purposes, over which movements not authorized by timetable, or train order, may be made subject to prescribed signals and rules, or special instructions."

and, Rule 716 of the Operating Department dated April 1, 1935, which outlines the duties of Yardmasters as follows:

"They will have charge of yards, of the men therein employed, the movement of trains and engines, and the distribution and movement of cars within assigned limits."

The Carrier further states that not three, but one Dispatcher's position was discontinued, and that there were no Dispatchers' duties transferred to any other officers or employees of the Railroad. Furthermore, that no work performed by yard forces or by Towermen at East Buffalo in carrying out orders of Yardmasters infringes upon the rights of Train Dispatchers, nor does it come within the scope of Train Dispatchers' agreement.

OPINION OF BOARD: The essential facts and issues in this record are not clearly stated, but as this Referee understands them, they are as follows: In the Buffalo Terminal, there are the Black Rock Yard, the East Buffalo Yard, the Abbott Road Yard, and the Buffalo Terminal Station. Prior to January 1, 1942, Train Dispatchers directed the movement of cars from one yard to another in this terminal. On and after that date, these movements of cars were placed under the supervision of Yardmasters. This dispute does not involve the train movements of through-trains, that is, trains which run from some other city to Buffalo or beyond; nor does it involve the switching of cars in any one of the above named yards in this Terminal.

The record shows that Yardmasters are now performing the work formerly assigned to and performed by the Train Dispatchers, except records are not kept of terminal movements on a form train sheet. The inter-calling telephone panel, located in the Dispatcher's office, was moved from that office, and set up in the East Buffalo tower, and is now being used by the General Yardmaster for the same purposes it was formerly used by the Train Dispatchers. In lieu of a train sheet, these Yardmasters keep a record of train and engine on another form.

The Scope Rule of the agreement is as follows:

"(a) The term 'Train Dispatchers' as hereinafter used and as defined in Section (b) of this article shall be understood to include Assistant Chief Dispatchers, Trick Dispatchers, Relief Dispatchers and Extra Dispatchers.

"(b) Assistant Chief Train Dispatcher: This class shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

"Trick Train Dispatcher; Relief Train Dispatcher; Extra Train Dispatcher: 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; to supervise forces employed in handling train orders; to keep necessary records incident thereto, and to perform related work.

"(c) Where payroll classification does not conform to the foregoing sections, anyone performing service specified therein shall be reclassified in accordance therewith."

The Board is of the opinion that the work now being performed by the Yardmaster comes within Subsection (b) of the Scope Rule. (See Awards

Nos. 1015, 1828, and 1831.) If there could be any doubt about this conclusion, it would have to be resolved against the Carrier for the reason that Dispatchers were doing this work at the time the current agreement was executed, August 1, 1937.

"This Board has repeatedly held that a Carrier may not arbitrarily take work from the scope of an agreement." Award No. 751.

The Board holds that the work now being performed by these Yardmen in reference to the above facts is in violation of the current agreement.

The claim for a monetary award is made in behalf of three Train Dispatchers. This record fails to show wherein they have suffered any damage by the arbitrary action of the Carrier. They continued to perform their duties as Train Dispatchers after January 1, 1942. They suffered no loss.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute, are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was a violation of the current agreement.

AWARD

Claim (a) sustained; Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 2070
DOCKET NO. TD-1992**

NAME OF ORGANIZATION: American Train Dispatchers Association

NAME OF CARRIER: The Delaware, Lackawanna & Western Railroad
Company

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the Buffalo Terminal, there are four yards, namely, the Black Rock Yard, the East Buffalo Yard, the Abbott Road Yard, and the Buffalo Terminal Yard. This award held that the Train Dispatcher, and not the Yardmaster, had the right to direct the movement of cars from one yard to another. For example, if cars were moved from Black Rock Yard to East Buffalo Yard, then this movement should be under the supervision of the Train Dispatcher and not the Yardmaster. This is true regardless of the kind of record kept as to such movement, or if no record of such movement was kept.

Whether it was necessary to put on additional Train Dispatchers to perform this work was not before this Board. However, the award did contemplate that if the Train Dispatchers already employed at this Terminal can do this additional work, then it would not be necessary to put on additional Train Dispatchers. But, if those already employed cannot do this work satisfactorily, then it would be necessary for the Carrier to put on additional Train Dispatchers to do this work, so that the award could be put into effect.

Referee Ernest M. Tipton, who sat with the Division as a member when Award No. 2070 was adopted, also participated with the Division in making this interpretation.

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

**ATTEST: H. A. Johnson
Secretary**

Dated at Chicago, Illinois, this 8th day of November, 1943.