Award No. 2804
Docket No. TD-2742

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association:

(1) That the Denver & Rio Grande Western Railroad Company is violating and continues to violate Rule 1, Scope of the Train Dispatchers' Agreement, Award of Board of Arbitration, National Mediation Board Case A-1430, Arb. 24, dated June 30, 1943, effective July 1, 1943, and the Interpretation of said award, dated January 8, 1944, by requiring and/or permitting the operators of the C. T. C. machines located at Lehi and Funston to perform all of the functions of a train dispatcher in connection with the movement of trains over the territory controlled by their machine.

2. That the operators of the C. T. C. machines at Lehi and Funston shall be classified as trick train dispatchers in accordance with Rule 1 of the Train Dispatchers' Agreement and rated and paid as provided for by the wage agreement covering trick train dispatchers from July 1, 1943, until the positions are properly classified and the violations corrected, and

(3) That any train dispatcher who has lost or who may lose time by reason of the violation subsequent to July 1, 1943, shall be properly compensated in accordance with the wage agreement.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Denver & Rio Grande Western Railroad Company and the American Train Dispatchers Association governing the hours of service and working conditions of train dispatchers, effective January 1, 1943. Rule 1-(a) Scope of this agreement reads as follows:

"RULE 1-(a)

SCOPE

The rules contained in this agreement apply to assistant and/or night chief, trick, relief and extra train dispatchers, but do not apply to chief train dispatchers other than as specified in Rules 3 (e) and 4."

and Rule 1-(b):

"RULE 1-(b)

DEFINITION OF CHIEF, NIGHT CHIEF, AND ASSISTANT CHIEF DISPATCHERS POSITIONS

These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

"Your letter March 1, 1944, making certain allegations:

"If it is your intention to present claims in connection with this award, they should be presented in the proper manner."

In other words, it is the Carrier's contention that the employes have not complied with these provisions of the Railway Labor Act, Amended, outlined in Section 3, First (i).

OPINION OF BOARD: The facts involved in this dispute may be gleaned from the statements of the respective parties but are in such form we deem it necessary to summarize as briefly as the length of the record will permit, the essential ones upon which the conclusions announced in this award are predicated.

On the Denver & Rio Grande Western Railroad prior to 1928 all main line train movements on that property were directed by Train Dispatchers who were vested with the primary responsibility for movements of trains by the train order method.

In October 1928, a centralized traffic control, hereinafter for convenience referred to as C. T. C. was placed in operation on the property on the Grand Junction Division between Tennessee Pass and Deen, a distance of 6.8 miles, it being the second of its kind to be installed in the United States. Upon completion of installation it was, and still is, operated by Telegraphers or Towermen under the direction of the Train Dispatcher. The installation is referred to by the Employes as a gauntlet operation between two stations. It appears the Towerman there operating the machine has but one of two options in the movement of trains and is able to maintain an intimate contact with the Train Dispatcher who has control of the trains on both sides of the operation, also that both Train Dispatcher and Towerman, whatever the situation may be elsewhere with respect to other C. T. C. operations, are in a position to comply with the operating rules of the Carrier. It is the Employes' contention that by reason of such facts there never has, and does not now, exist a dispute regarding the operation of such machine and that the same is true regarding subsequently installed C. T. C. operations of somewhat similar character at Minturn, Thistle and Pueblo.

On October 31, 1929, another C. T. C. installation was placed in operation between Endot and Dern covering a distance of approximately 32 miles with the control machine located at Lehi. Prior to the time it was put in operation the Dispatchers' Organization made written request to the Carrier that Train Dispatchers be placed in charge of the control board at such location. This request was refused. Thereafter, the Carrier entered into an agreement with the Telegraphers' Organization for filling the positions, designating them as Tower Directors. After installation such employes manned the control board and continued to do so up to the present moment.

On September 5, 1937, a C. T. C. installation was placed in operation between De Beque and Grand Junction, a distance of 33.3 miles with control board at Grand Junction and another later installed between Agate and Helper, covering a distance of 127.8 miles with control at Green River, the control boards at each location being manned and operated by Train Dispatchers.

Later on September 19, 1941, still another C. T. C. installation covering 36 miles was placed in operation between Chacra and Tunnel and subsequently extended to cover a distance of 73.8 miles with the control machine located at Funston. Prior to the installation of this machine the Train Dispatchers requested the Carrier to man the operation with Train Dispatchers but this request was also refused. When installed such machine was and now is manned by Towermen, a class of employes represented by the Telegraphers' Organization.

From what has been related it is obvious that from the beginning the operation of C. T. C. equipment has not been conceded to be the work of either group and has been manned in part by representatives of each.

From the date of the installation at Lehi and Funston, and particularly after the commencement of operations at Funston there was continuous bickering between the Dispatchers and the Carrier over the rights of the former to fill the positions at those locations with Dispatchers. As a consequence the current Agreement between the parties, effective January 1, 1943, did not include a Scope Rule defining Trick Train Dispatchers but left blank Rule 1 (c) with the notation "No agreement reached." Eventually on February 26, 1943, the Carrier served notice and proposed the adoption of a rule covering the operation and manning of all C. T. C. installations on its property which was not satisfactory to the Employes.

On March 22, 1943, the parties by mediation settlement agreed that Rule 1 (c), which reads:

> "The above class includes 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."

would be incorporated into the Agreement upon and subject to the disposition of the controversy in regard to operation and manning of C. T. C. installations, which dispute was to be handled to a conclusion under the Railway Labor Act as a separate issue pursuant to the Carrier's proposal of adoption of the rule hereinbefore referred to.

On April 9 following the parties entered into an arbitration agreement for disposition of the controversy. Among other things this agreement provided:

> **"FOURTEENTH:** Such award so filed shall be final and conclusive upon the parties thereto as to the facts determined by the award and as to the merits of the controversy decided.
>
> **"FIFTEENTH:** Any differences arising as to the meaning, or the application of the provisions, of such award shall be referred for a ruling to the Board, or to a subcommittee of the Board agreed to by the parties thereto; and such ruling, when certified under the hands of at least a majority of the members of such Board, or, if a subcommittee is agreed upon, at least a majority of the members of the subcommittee, and when filed in the same district court clerk's office as the original award, shall be a part of and shall have the same force and effect as such original award.
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> **"SIXTEENTH:** The respective parties to the award will each faithfully execute the same."

Portions of the arbitration award, pertinent to our purpose, handed down on June 30, 1943, and effective July 1 following read:

> "The specific questions submitted to this Board for decision were:
>
> (a) 'Shall Centralized Traffic Control installations now in service or in the future installed be manned and operated in accordance with Carrier's formal notice of February 26, 1943, copy of which is attached hereto as Exhibit "A."
>
> (b) 'If the answer to the above question is in the negative, what Centralized Traffic Control installations now in service or in the future installed shall be manned and operated by employes coming within the scope of the Agreement between the Carrier and the American Train Dispatchers Association, effective January 1, 1943.'

"The Board concludes that the answer to question (a) should be in the negative and so decides."

* * * *

"Upon consideration of all of the evidence introduced and exhibits filed herein the Board concludes that the answer to the specific question (b) should be as follows, to-wit:

> "Question (b). All C. T. C. machines at present in service and in future installed will be manned and operated by train dispatchers when the control board is located at points where train dispatchers are employed. The train dispatcher is primarily responsible for the movement of trains and when the control board is not located at a point where train dispatchers are employed and the C. T. C. machine is manned and operated by other employes, train movements in that territory shall be by or under the direction of the train dispatcher."

The parties failed to agree with respect to the application of the award and the Employes then sought an interpretation thereof as permitted by Section 15 of the Agreement heretofore quoted. In due time the Board reconvened and on January 8, 1944, handed down its interpretation which reads:

"If there exists any misunderstanding between the parties as to the meaning or the application of the provisions of the award it could only be as to that part of the award which reads as follows:

> 'The train dispatcher is primarily responsible for the movement of trains and when the control board is not located at a point where train dispatchers are employed and the CTC machine is manned and operated by other employes, train movements in that territory shall be by or under the direction of the train dispatcher.'

"The Board, by that award, meant and intended that the train dispatcher, having been charged by that award with the primary responsibility of all train movements over his territory, and in connection therewith, must at all times have complete authority over the CTC operators in his territory and that such operators shall handle train movements in the territory in such manner as specifically or generally directed by the train dispatcher."

Notwithstanding the interpretation the parties continued to disagree as to the force and effect of the award and in addition disagreed as to the construction to be placed upon the Board's interpretation with the result the present claim was presented to this Division for decision.

With facts stated we turn to questions raised in presentation and defense of the claim as submitted. As we view it there are three issues so presented. They are: (1) can the controversy be disposed of without regard to the rights of the Telegraphers' Organization and of the Telegrapher employes now working on the Carrier's C. T. C. installations; (2) does this Division have a right to render a decision which in fact requires interpretation and application of the arbitration award and its interpretation; and (3) can the claim be disposed of on its merits and if so, what disposition should be made of it in view of the facts and circumstances disclosed by the record. For reasons which must be apparent we treat the issues to which we have referred in the order mentioned.

As to the first, our conclusion presently to be announced makes its decision unnecessary except to answer it in the affirmative. Whatever may be said for the Carrier's contention this Division should not render an award without noticing other persons or crafts which might be affected by its decision, it can be stated such awards are predicated upon the fundamental premise what is

therein determined must adversely affect the substantial and valuable rights of others. No case has gone so far as to hold that when those rights are not to be affected any necessity exists for giving anyone other than the parties to the dispute an opportunity to be heard. So, irrespective of what the force and effect of the rule as discussed in those decisions may be or whether it would have application under the confronting facts in the instant proceeding were the claim to be sustained, it would serve no useful purpose to deal with the issue so raised by the Carrier in a situation where a decision on the merits does not require its consideration or permit application of its principles.

With respect to the second issue, it in effect challenges the jurisdiction of the National Railroad Adjustment Board to apply the terms of mediation agreements, likewise arbitration agreements and interpretations thereof when handed down pursuant to provisions of the Railway Labor Act. So far as the current contract between the parties, it is of course conceded that power exists under Section 3 (i) of such act. If this be so the question immediately presents itself as to why the three types of agreements to which we have referred do not come within the same category. We believe they do. That this is true, would seem irrefutable unless something appears, which we do not find, in the law which permits their inception. As we view it their effect is to supplement the original contract and when brought into existence in the manner contemplated by the Act, they become as much a part of it as if their terms had been originally incorporated therein. By agreement their conditions are made final and conclusive upon the parties as to the merits of the controversy decided. Their distinguishing feature is that after mutual agreement they become effective through the action of other agencies set up by the Act for the purpose of making or completing contracts between the parties and a part of the original contract in that manner. They differ from such original contract only in the fact that it was consummated by the parties themselves. That being so, we conclude no sound basis exists for a contention this Board has no jurisdiction to apply them and we care not whether that application involves an interpretation of their language or a determination of whether the parties have complied with their requirements. Since when once effective they become a part of the contract, disputes pertaining to their application as well as application of the original agreement itself come within the jurisdiction of the Board under Section 3 (i) and are properly determinable. It will not be necessary to refer to our decisions on the subject. They have been examined and it suffices to say we believe those sound in principle and reason support our conclusion, if, in fact, it can be successfully contended that any of them are contrary thereto when distinguished.

Turning to the third issue, i. e. the merits of the controversy, we experience more difficulty.

Were we concerned solely with the application of Rule 1 (c) hereinbefore quoted our task would be less onerous. Standing alone, and without going into the details influencing it, we are inclined to the view that the work required to carry on C. T. C. operations on the property would fall within its scope. We have no quarrel with the award of the Board of Arbitration on the Boston and Maine Railroad, identified by the Employes as National Mediation Board File GC-760 ARB, and cited and relied on by them as supporting their position. We frankly concede that if the Arbitration award had been the same in the instant case as the one there our disposition of this dispute on its merits would of a certainty be entirely different. But the construction of Rule 1 (c) is not all we have to consider. Here the Employes by their own action agreed to arbitrate under conditions which bound them to the terms of the award and any interpretation thereof. The conclusion they are so bound is not only ours but their own as well for in their claim they charge violation of the rule, the award, and the interpretation, while in their submission they allege the award and interpretation is now not only an agreement, but the controlling rule governing the operation of C. T. C. machines. This being true, it necessarily follows that Rule 1 (c) has been supplemented and if, in fact, it ever was applicable to C. T. C. operations on the property, has been superseded

and we are limited in our deliberations to the question of whether under the facts and circumstances disclosed by the record the award and its interpretation are being violated.

The very nature of the question requires that before application of the facts we first construe the rules which are applicable. To do that we must at the outset have in mind the precise question submitted and determined by the Arbitration Board. It has been heretofore referred to and to requote it would be superfluous. Analyzed, the query presented was what C. T. C. installations should be manned by employes coming within the scope of the Dispatchers' Agreement? Next, we must review the answer. It, too, has been quoted and need not be repeated. Again the Employes make a vital concession in their submission. They concede that neither the answer (Award) nor the Interpretation gave the Dispatchers the right to man and operate the machines at Lehi and Funston, which in passing we note are the only operations here involved. Having conceded that they then say, in effect, nevertheless the Award and Interpretation gave the Train Dispatchers the right to direct and made them responsible for the movement of trains in all C. T. C. territory. So far as the award is concerned, we are inclined to believe their conclusion places too much emphasis on the language to be found therein and to which they refer, and too little emphasis on the first sentence, "All C. T. C. machines at present in service and in future installed will be manned by Train Dispatchers when the control board is located at points where Train Dispatchers are employed." From the language quoted an inference is plainly deducible the answer contemplates installations could be manned by persons other than Dispatchers where the control board was located at points where others than Dispatchers were employed. In addition, we believe the conclusion entirely ignores the effect of the concluding words of the last sentence, "or under the direction of the Train Dispatcher." But that is not all. We are also obliged to give force and effect to the Interpretation. It, too, has been set forth at length but we requote it for emphasis:

> "The Board, by that award, meant and intended that the train dispatcher, having been charged by that award with the primary responsibility of all train movements over his territory, and in connection therewith, must at all times have complete authority over the CTC operators in his territory and that such operators shall handle train movements in the territory in such manner as specifically or generally directed by the train dispatcher." (Emphasis supplied.)

Here again, when the language of the Interpretation is analyzed, it seems the Employes' conclusion completely ignores and overlooks the plain meaning and intent of the language which we have underscored for purposes of emphasis. It seems clear if in fact not obvious, it clearly contemplates and permits operation of C. T. C. machines by others than Dispatchers but provides that when they do operate such machines they shall handle train movements in the territory in such manner as is specifically or generally directed by the Train Dispatcher. In fact, we believe the language is plain and unambiguous and of itself, without application of the rules pertinent to statutory construction requires that construction.

So construed, irrespective of what Rule 1 (c) might require if it had not been supplemented and superseded, so far as C. T. C. installations on the property are concerned, the Award and Interpretation, and since they became effective Rule 1 (c) itself, are not being violated when operated by persons other than Dispatchers, so long as they are specifically or generally directed by the Train Dispatcher and he is permitted to exercise complete authority over them. The determination of that question is one of fact to be determined from evidence appearing in the record. Without laboring it, so far as it pertains to the situations at Lehi and Funston, our examination of the record compels the conclusion that such evidence falls short of establishing that such C. T. C. operations are not conducted in the manner required by the Award and its Interpretation. Therefore, the claim as filed cannot be sustained.

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 employes involved in this dispute are respectively carrier and employes 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 for the reasons set out in the Opinion the facts disclosed by the record do not warrant an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1945.

SPECIAL CONCURRENCE IN AWARD 2804—DOCKET TD-2742

We concur in the main with the conclusions of this Award including the reasoning in connection with the merits wherein the parties are held to their commitments in respect to abiding by the Arbitration Award.

We must, however, disagree in part with the conclusions in analysis of the second issue that Mediation Agreements, likewise Arbitration Agreements and Interpretations thereof are at all times from their inception subject to application by this Adjustment Board under the provisions of Sec. 3 First (i) of the Railway Labor Act and because, as stated in the Opinion, "As we view it their affect is to supplement the original contract and when brought into existence in the manner contemplated by the Act, they become as much a part of it as if their terms had been originally incorporated therein."

Sec. 3 First (i) of the Act is not intended to and cannot nullify voluntary specific commitment of the parties to a contract to give the exclusive right of interpretation and application of Mediation Agreements or Arbitration Awards and Interpretations thereof to the tribunal responsible for their initial promulgation under the Railway Labor Act.

R. F. Ray
C. P. Dugan
A. H. Jones
C. C. Cook
R. H. Allison