

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company violated and continues to violate the provisions of its Agreement with its train dispatchers when, effective November 21, 1949, this Carrier abolished the third trick train dispatcher position at Enid, Oklahoma; closed the train dispatching office at that point between the hours of 10:00 P. M. and 6:00 A. M., but during which period of time the Carrier continued to operate trains by other means over dispatching territory on which train dispatchers are contractually entitled to direct the movement of trains, and

(b) The St. Louis-San Francisco Railway Company shall be required to pay those train dispatchers who were and are available, willing and entitled to do that work, but were not and are not used for that purpose, a day's pay for each day (or night) on which trains were or are operated over any part of the dispatching territory involved until the violation of the provisions of the aforementioned Agreement has ceased.

EMPLOYES' STATEMENT OF FACTS: An agreement governing the hours of service and working conditions of train dispatchers, between the parties to this dispute, revised effective September 1, 1949, is in effect. A copy thereof is on file with your Honorable Board and is, by this reference made a part of this submission as though fully incorporated herein. The scope of said agreement and the rules pertinent to the instant dispute read as follows:

"ARTICLE I

"Scope

"(a) This agreement shall govern the hours of service and working conditions of train dispatchers. The term "train dispatcher" as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement."

"Q. Then it is based entirely upon the National Agreement of May 27, 1937, is that right?

"A. Yes."

In connection with the contention advanced by Local Chairman Edson that the closing of the dispatcher's office created an unsafe condition, it should be pointed out that the Superintendent in charge of this particular territory as well as the Assistant General Manager and General Manager have worked as train dispatcher and they do not subscribe to the theory that the closing of this office creates any unsafe condition.

The Board will particularly observe that the Local Chairman did not at this meeting claim the closing of the dispatcher's office for one shift violated the schedule agreement and that his complaint was based entirely upon the National Agreement of May 27, 1937. This is especially noteworthy in that Local Chairman W. N. Edson is the organization representative who had previously handled the specific time claims of the individual train dispatchers on the division level before they were ultimately appealed to the Carrier's Director of Personnel.

The Carrier assumed, and it thinks rightfully so, that the organization, in initiating a new complaint under the National Agreement of May 27, 1937, had abandoned its previous time claims and would thereafter progress its case on an alleged violation of the National Agreement rather than the schedule working agreement. The complaint under the National Agreement has not been progressed by the organization above the division level and the Carrier does not have knowledge whether the organization intends to do so or not. The Carrier is, therefore, placed in the peculiar position of having to defend itself against a claim in an ex parte submission before the Third Division based on an alleged violation of the provisions of its schedule agreement last revised effective September 1, 1949, if that is the agreement referred to by the employees in paragraph (a) of their Statement of Claim, and a complaint under the provisions of the National Agreement of May 27, 1937, which to the Carrier's knowledge is still pending and unsettled on the property. It is unreasonable to expect a carrier to defend itself against two simultaneous proceedings, and if this is not an attempt of the organization to place the carrier in double jeopardy, it is, to say the least, splitting the cause of action, if one exists.

The Board is respectfully requested to find that the Carrier did not violate the working agreement.

All data submitted in support of Carrier's position have been presented to the employees and made a part of the particular question in issue.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim presents the question whether the Carrier violated its Agreement with the Organization when it abolished the third trick train dispatcher position, 10 P.M. to 6 A.M. at Enid Oklahoma.

The Carrier abolished the third trick November 21, 1949. Nine general and specific time claims ensued. Eight of them were denied upon the ground that the trick had been properly abolished and that the Agreement did not require a train dispatcher to be on duty when a train departs from or arrives at a terminal if no one is used to perform train dispatcher's work. One of the nine claims was allowed upon the ground that a yardmaster at Enid had performed train dispatcher's work after the abolishment by telephoning yardmaster at West Tulsa information concerning the arrival time of a train delayed by derailment.

After conference the chief operating officer of the Carrier denied the claim and on May 18, 1950 the General Chairman referred the matter to the President of the Organization.

The Carrier heard nothing further until September 24, 1950 when the Local Chairman at Enid requested a conference "to re-establish safe operation and reasonable working conditions as referred to in Item (1) of the National Agreement" of March 27, 1937. At this conference the Organization declined to discuss the local Agreement and based its contentions entirely on the National Agreement. This Complaint under the National Agreement is still pending and unsettled on the property.

The Organization gave notice of intention to file its ex parte submission here on February 28, 1951.

FIRST: Paragraph 4 of the National Agreement lists the subjects which fall within its scope. One of the subjects is "Adequate Force". What may be handled under the National Agreement is "any conditions or practices involving safety in train dispatchers service or involving working conditions of dispatchers not covered by existing agreements." Conversely, the same conditions or practices may be handled under the local Agreement if any of its terms are violated.

The Carrier has thus made separate commitments in two agreements. From one act of the Carrier, therefore, the Organization may in a proper case derive the right from both agreements to conduct two simultaneous proceedings. This is not "splitting a cause of action" or "placing the Carrier in double jeopardy"; but if it is, the Carrier has agreed to it.

For these reasons we are unable to conclude that pursuit of one of these remedies was a waiver of the other or that pendency of proceedings under the National Agreement constitutes a defense or is of any material concern here (See Award 5069).

SECOND: The Scope rule in this Agreement protects train dispatchers' work and not a particular position or trick at Enid, Oklahoma. Consequently a trick may be abolished, if the work has disappeared (Awards 439, 3838, 4001, 4099, 4065, 4849, and 5283). The work, however, need not entirely disappear before a position or trick may be properly abolished, provided none of the work is assigned to, or performed by, others not covered by the Agreement (See Award 5641). As we said in Award 439:

"Neither can the Board agree that, under the application of the agreement between the employees and the Carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full-time assignments, would do away with the necessity for or use of extra employees, and would be against the economic operation of the carriers and opposed to the best interests of the carriers, the employees and the public."

The territory comprising the seniority district of the Train Dispatcher whose trick was abolished consists of the Western Division of the Carrier which includes four subdivisions: Beaumont, Perry, Hobart and Avar. There is continuous telegraphic service on the Perry sub-division at West Tulsa, but there are no open telegraph offices on the other three subdivisions during the trick in question although telegraphers there are subject to call.

There are generally one, sometimes two and rarely three regular trains daily leaving or arriving Enid as the initial or final terminal during this third trick; and counting regular, extra and other trains, there is an average of about four trains per day.

The Carrier's procedure is that, so far as arrivals at Enid during this third trick are concerned, the arrivals are recorded the next morning by the first trick train dispatcher; and that so far as clearing departures is concerned, the clearance is left for conductors by the second trick train dispatcher on the train register book in the register room which is adjacent to the dispatching office at Enid.

This method of operation does not involve the performance of the duties of train dispatchers "by other officers or employees" within the meaning of the Scope rule. The recording of arrivals during the third trick is performed by the first trick train dispatcher and the clearing of departures is performed by the second trick train dispatcher. The fact that the second trick train dispatcher does not personally hand the clearance to the conductor does not mean that "other officers or employees" are doing dispatchers' work, because the conductor does no more than he would do if the third trick train dispatcher were present.

Although this method of operation does not involve the performance of the duties of train dispatchers by others, it does put more work on the first and second train dispatchers and may not afford all the protection inherent in personal delivery of the clearance. These, however, are questions of safety and adequate force which may be pertinent considerations under the National Agreement, but not here.

There remains to consider the movements between Enid and Blanton which are the subject of 8 specific claims covering 4 extra movements east and 4 extra movements west. The Carrier admits that a dispatcher should have been called during the third trick to issue clearance at Enid for the westward movements and asserts that a dispatcher has been called for this purpose ever since January 29, 1950. The extra movements east are controlled by a block signal operated by the train dispatchers; and during the third trick these extras east have moved, against the block signal, from Blanton into the yard at Enid under flag protection. These are not emergencies; and the control of the movements east by flag constitutes the performance of the duties of train dispatchers by other officers or employees.

For the foregoing reasons paragraph (a) of the claim should be denied; paragraph (b) of the claim should be sustained as to the 8 specific days and any other days when trains moved east or west Enid--Blanton during the third trick; and paragraph (b) of the claim should be otherwise denied.

FINDINGS: The Third Division of 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 the Agreement was violated as above found.

AWARD

Paragraph (a) of the claim denied.

Paragraph (b) of the claim sustained in part and denied in part in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.