Award No. 6885
Docket No. TD-6756

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Southern Pacific Company (Pacific Lines), hereinafter referred to as "the Carrier," violated and continues to violate Article 1, Sections (a) and (c) of the currently effective Agreement between the parties to this dispute when it required and/or permitted employes not covered by that Agreement to be responsible for the movement of trains between certain stations or sidings and on branches located on its San Joaquin Division, to-wit, Famoso, Richgrove, and Jovista; the Arvin Branch; the Success Branch; between Mile Post 295.25 (West of Slater) and Mile Post 306.76 (East of Saco) and between Mile Post 263.03 (West of Quail) and Mile Post 267.45 (East of Pixley).

(b) The Carrier shall now compensate the four (4) available extra train dispatchers and in the absence of four (4) extra train dispatchers, compensate the four (4) senior available assigned train dispatchers in its Bakersfield, California train dispatching office, one day's pay each at trick train dispatcher pro rata rate for each calendar day subsequent to May 28, 1952 on which they were deprived of train dispatching employment to which they were entitled when employes not covered by the Train Dispatchers' Agreement were used to perform train dispatcher work during the time the violation cited in paragraph (a) hereof existed and until that violation ceases.

EMPLOYES' STATEMENT OF FACTS: The San Joaquin Division comprises three sub-divisions, viz: Fresno, Tehachapi and Mojave, totaling 395.97 miles of main track and 465.36 miles of branch line track. We are, in this claim, concerned with the Fresno and Tehachapi subdivisions as hereinafter referred to. The Fresno subdivision includes the following territory:

One main track extending between Fresno Yard and Bakersfield, a distance of 111.1 miles;

One main track extending between Fresno and Famoso, a distance of 104.3 miles;

whether the classification of a position is that of train dispatcher, is whether or not the incumbent is "primarily responsible for the movement of trains", and in this docket there is no question of determining whether "the classification of a position" is that of train dispatcher, because there is no position nor any need for such position under the operating rules.

As will be noted, carrier's Operating Rule No. 93 has been in effect for approximately 46 years and antedates any agreement with the petitioner by approximately 16 years. The locating or relocating of yard limits is and has always been a managerial prerogative, insofar as the train dispatchers are concerned, and that prerogative has never been restricted nor referred to in the various agreements with the petitioner.

In addition to movements made within yard limits, as provided by Rule No. 93, carrier's operating rules provide for the movement of trains by signal indication and under flag protection without train orders and without train dispatchers being responsible therefor.

At this point, attention is directed to the following portion of "Opinion of Board" in this Division's Award No. 5806 (Referee Carter):

> "The Employes contend that the scope rule of their Agreement with the Carrier, Article 1 (c), means that when trains are operated or records kept incidental thereto, a train dispatcher must be used. We cannot agree with this interpretation of the rule. We think the rule means that if an employe is used to issue train orders or otherwise handle trains, or to keep records incidental to train movements, the work belongs to a train dispatcher. But in the case before us, after Claimant Pollock issued the work orders on July 3, no further orders could have been issued because all stations in the involved area were closed because of the strike. There were no trains moving that could possibly interfere with the work train. There were no records to be kept which in any manner involved the safe operation of trains. The record clearly fails to show the need for a train dispatcher. No basis for an affirmative award can exist under such circumstances."

The "Opinion" in Award 5806 fits the instant case perfectly. Article 1 (c) of the agreement there in evidence is the same as Article 1 (c) of the current agreement. The contention made in that case is the same contention made by petitioner in this docket. Here again the record clearly shows there was no dispatching work to be performed and the services of a train dispatcher were not required.

CONCLUSION

The carrier asserts that the claim in this docket is without basis or merit and, therefore, respectfully submits that it is incumbent upon this Division to deny the claim.

All data submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim submitted by the American Train Dispatchers' Association against the Southern Pacific Company (Pacific Lines) charges that the Carrier is violating Sections 1 (a) and 1 (c) of Article 1, the Scope Rule of the Agreement, between the Parties effective April 1, 1947, when it required and/or permitted employes not included within the coverage of the Agreement to be responsible for the movement of trains between certain stations and sidings and on branches, naming them, located on its San Joaquin Division; and that as a result of such violations, beginning on May 28, 1952, the Carrier compensate four available extra Train Dispatchers, or in their absence, compensate the four senior available

Train Dispatchers in its Bakersfield, California train dispatching office, a day's pay at pro rata rate for each day the violation existed after the date last mentioned. The claim is restricted to alleged violations of the scope rule at the stations, sidings and branches therein mentioned and the dispute will be resolved solely upon that basis.

The record in this case is long, tedious and confusing. Moreover it is replete with irreconcilable factual assertions as well as arguments, some of which are specious because based on an erroneous version of the true facts and others of little consequence because they have no material bearing on the real issues involved. Under such circumstances to detail the controverted facts of record or make extended reference to all arguments advanced by the Parties would serve no useful purpose and merely encumber what, of necessity, must be a somewhat lengthy Opinion. Therefore this Opinion will be limited to what the Board, after an exhaustive review of the record, deems to be the evidence entitled to probative force and the pertinent issues raised with respect thereto.

Touching events giving rise to the controversy it may be said the portions of the property in question are located in a territory producing great quantities of fruit and other perishable farm products, the perishable season extending from about May 1 to November 1 of each year. That beginning on or about July 1947, the Carrier commenced to include certain portions of the main line and certain branches of the San Joaquin sub-division within designated "yard limits" for operating purposes. About the same time similar action was taken with respect to the Arvin Branch of the Tehachapi sub-division. This continued until on or about May 28, 1952, when approximately 28.2 miles of branches and 35.4 miles of main line had been included within designated yard limits.

As each of the yard limits to which reference has just been made was established the Carrier commenced to carry on operations therein without the use of Train Dispatchers, under its operating Rule No. 93, providing for the movement of engines and trains within yard limits without the necessity of train orders. Operating Rule No. 93, it is to be noted, had been in force and effect on the Carrier's property since 1907, long prior to July 1, 1923, the effective date of the first Train Dispatchers' Agreement, with revisions from time to time throughout the years down to December 1, 1951, the date it was last revised. Some complaint is made by the Association that this last revision contained a substantial change in form but, based on our examination of the rule as it existed in prior years, we have reached the conclusion that for all purposes pertinent to the rights of the Parties and the issues presented the Organization's position on this point cannot be upheld. This, it may be added, is true notwithstanding it be conceded, that for purposes of fortifying its position with respect to the consolidation of the yards in question the Carrier added the words "Without train order authority" to the December 1, 1951, revision of Operating Rule No. 93. Even without the addition of such language, the rule, so well established as to become almost traditional, and to which we adhere, has always been that switching and train crews can move and operate engines and trains within properly defined yard limits without train order authority under an operating rule, containing language such as appeared in Rule 93 long prior to its last revision.

In connection with what has just been stated it is interesting to note and might as well be here pointed out that although it spends much time on the subject in its submissions the Organization does not base this claim on the ground of improper establishment of the yards or yard limits in question. In fact not once, but repeatedly, in such submissions it concedes the Carrier's right to do so under the existing conditions and circumstances. For just one of several similar illustrations of record we quote from the "Employes' Reply to Carrier's Oral Submission" where the following statement appears:

"Again, let us say that the Organization has no quarrel with the Carrier over any managerial prerogative to relocate its yard limits to meet its operating requirements but, having done so, it must, coincident with such changes, abide by the terms of the Agreement."

Turning again to the record for purpose of supplementing and enlarging essential details of the factual picture it cannot be denied that near the end of the 1951 perishable season, with its plans for consolidating yard limits and carrying on operations therein in the manner heretofore indicated practically completed, the Carrier abolished four Train Dispatcher positions at its Bakersfield dispatching office and thereafter failed to reestablish those positions at the beginning of the 1952 perishable season as had been customary in preceding years. Nevertheless at that time it did reestablish three Assistant Trainmaster positions which had also been discontinued at the end of the perishable season in 1951. The Organization's evidence respecting the reasons for the Carrier's action in failing to reestablish the four Train Dispatchers' positions is far from satisfactory. Notwithstanding it is sufficient to raise a fair inference that in part at least, just how much we are unable to determine because of the state of the record, such action was due to the new yard set up in the involved territory. Indeed it clearly appears from the evidence that after commencement of operations under such new yard set up the major portion of the primary responsibility for movement of engines and trains in such territory was turned over to the train and engine crews operating within the newly established yard limits. This, as we have seen, was permissible. Nevertheless it resulted in a decrease of some work previously performed by Dispatchers.

However, the Carrier did not see fit to turn all train operation movements in such yards over to train and engine crews. It cannot be denied, although here again the record is weak and limited in scope respecting the extent to which it was authorized, that a portion of the responsibility for movement of engines and trains in the yards was turned over by Carrier to the occupants of the three re-established Assistant Trainmaster positions, who at times were either directed or permitted to assume the responsibility of making arrangements for and issuing instructions to crews regarding the meeting of their engines or trains within the established yard limits, particularly while operating over the main line.

The Association, as has been heretofore indicated, does not here make claim the newly created yards were improperly established or that the four Dispatcher positions were improperly abolished but bases its right to relief solely upon the premise that Carrier's action, as previously related, resulted in taking away work which belonged to Train Dispatchers under Sections (a) and (c) of Article 1 of the current Agreement, which so far as here pertinent, read:

"Section (a). Scope. This agreement shall govern the hours of service and working conditions of train dispatchers:

This class shall include chief, assistant chief, trick, relief and extra dispatchers, * * *"

"Section (c). Definition of Trick Train Dispatchers' Positions. 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."

In passing, and without laboring the point, it should perhaps be stated that after careful consideration of extended arguments advanced by the Carrier, we do not agree with its position the phrase "or otherwise"

as used in Article 1 (c), supra, has reference to train movements by centralized traffic control only; and find no merit whatsoever in other arguments made by it to the effect the Association makes any admissions to that effect in its divers submissions.

The principal contention advanced by the Organization in support of its position is that under Section (c) supra, all train movement work belongs to Train Dispatchers. Heretofore we have disposed of this contention contrary to the Association's position by stating we adhere to the established and traditional rule that switching and train crews can move and operate engines and trains within properly designated yard limits without instructions from Train Dispatchers under operating rules such as are here involved, hence it requires no further discussion.

When stripped of all excess verbiage the gist of all remaining contentions advanced by the Organization is to the effect that, even though—as we have here held—the train and engine crews in question can move their engines and trains within the involved yard limits on their own initiative, it appears the Carrier has seen fit to continue the issuance of what, when viewed in the light of all the conditions and circumstances, is tantamount to the issuance of train orders by authorizing the three Assistant Trainmasters to assume on occasions the responsibility for the moving of trains and engines, particularly on the main line, by making arrangements and issuing instructions for the meeting of such trains within the involved yard limits as established; and that therefore whatever portion of this work has been or is now being performed by such Trainmasters has been and is now being given to them in violation of the provisions of the Agreement last above quoted. When applied to the facts of this particular case, as heretofore related and as set forth in far greater detail in the record, and limited strictly thereto, we are inclined to the view the contentions made by the Association on this point have merit and should be upheld. Having reached this conclusion we are impelled to hold that Claim (a) must be sustained.

The conclusion just announced does not mean that a like conclusion is warranted as to Claim (b) which, it is to be noted, is a blanket claim with no names or dates, and is based on the premise all train movement work in the yards in question belonged to Train Dispatchers. Having determined, in the disposition of Claim (a), that the involved train and engine crews could move their respective trains within the yard limits in question on their own initiative, it becomes obvious the major premise on which Claim (b) is based is no longer involved. Actually, in view of the findings made with respect to Claim (a), the only possible reparation allowable under Claim (b) would be for work performed by the three Assistant Trainmasters. With respect to this remaining phase of Claim (b) it can be said (1) the evidence of record respecting Trainmasters directing the meeting of trains as heretofore mentioned is limited to a very few statements and is weak and highly unsatisfactory; (2) such evidence as there is does not disclose the dates on which violations of the Agreement occurred or the individuals available; (3) the Organization has not maintained the burden of establishing by evidence the compensation due, if any, for violations found to exist; and (4) the entire record is in such a state it would be impossible for this Board or any other tribunal to render a sound monetary award on the basis of the facts presented. In view of what has been heretofore stated the Board feels impelled to deny Claim (b) in its entirety and it is so ordered.

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 the Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim (a) sustained as per the Opinion and Findings.

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 8th day of February, 1955.