

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

HUDSON & MANHATTAN RAILROAD COMPANY

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

(a) The Hudson & Manhattan Railroad Company, hereinafter sometimes referred to as "the Carrier," violated and continues to violate the currently effective Agreement between the parties to this dispute when, effective November 23, 1952, it abolished three regular train dispatching positions and the duties of one extra train dispatcher for two days each week, and thereafter transferred the duties of those positions to employees and officials not covered by the Agreement.

(b) The Carrier shall now pay to Train Dispatchers G. W. Hodgson, A. Bartha and T. J. Farrell who were the regularly assigned train dispatchers and to Extra Train Dispatcher M. Duffy, referred to in paragraph (a) hereof, the difference between what they earned in other employment with the Carrier and the compensation to which they were entitled and would have earned had the Carrier not violated the Agreement to the extent herein claimed, and to any other train dispatcher so adversely affected subsequent to the commencement of this claim and to each and all of those claimants herein from the beginning of the violation and until it ceases.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of August 15, 1950, hereinafter referred to as "the Agreement." A copy thereof is on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

The title page of that Agreement is as follows:

**"AGREEMENT
BETWEEN
HUDSON AND MANHATTAN RAILROAD COMPANY
AND ITS
TRAIN DISPATCHERS
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION"**

There is no description or definition of the duties of train dispatchers in the Agreement. Therefore, the right to the work herein claimed rests on

No. 7939, Docket No. TE-3958 this Division held, on complaint of the ORT, that the Carrier could not maintain a Train Dispatcher, instead of a Train Clerk, on a P. M. assignment on Sundays at Hoboken Terminal, because the work to be performed was Train Clerk's work.

CONCLUSION

Under the agreement the Carrier is entitled to abolish the positions in question. The duties of these positions have not been transferred. The claim should be denied.

Oral hearing is requested.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arises by reason of Carrier's action in placing certain positions on a five-day-per-week basis, Monday through Friday, with rest days Saturday and Sunday, and failed to fill the positions on those two rest days. The essential facts are not in dispute.

Petitioner, in brief, contends that since in the blanking of dispatchers' positions on Saturday and Sunday each week, work of those positions was assigned to and performed by officers or employees outside the coverage of the Agreement, such action constituted a violation of the Agreement. That the question, in brief, is, can Carrier arbitrarily blank such positions on the two rest days? That here these duties of train dispatchers on this Carrier are fixed by reason of years of custom and practice and is the work traditionally performed by them. That we are not concerned with complete abolishment of dispatchers' positions. Article 3 (b) prohibits the use of regularly assigned train dispatcher on his rest days except when unavoidable emergency prevents furnishing relief or, in other words, a regular position must be filled seven days per week.

The Carrier in presenting its case gives the historical background of its operations and states that like other rapid transit systems, a large volume of traffic during the morning and evening rush hours exists and that there is very little traffic in off-periods of the day. Also, that Carrier has operated at a deficit for many years. That as a result of reduction in service on November 23, 1952, Carrier abolished all Saturday and Sunday Train Dispatcher assignments, except one Saturday assignment at Hoboken, and also abolished the seven-days-per-week midnight assignment at Hudson Terminal. That Trainmaster's basic duty is to keep the railroad running on time and to make adjustments required by unforeseen circumstances and that the duties here performed are not similar to those duties generally performed on other railroads by train dispatchers. Cited in support of the position taken are Awards 5149, 4235, 6076, and 6235. The Carrier claims that the Petitioner has failed to prove that they have the exclusive right to perform any work, their only duty not performed by other employees being certain on-the-spot supervision which was abolished and no rule makes it mandatory for a train dispatcher to personally supervise each terminal. Award 931 is cited as being consistently followed by this Division. Furthermore, that there is no proof that Trainmasters assumed any duties previously performed by train dispatchers for the on-the-spot supervision when the same was abolished.

It would seem in a review of this record that in the work here performed, consideration must be given to the manner in which this work has been performed by employees here involved. In this connection, it appears that the work has been performed for many years, seven days per week, prior to November 23, 1952, and since that date this work is performed on Saturdays and Sundays. Therefore, we must conclude that it was not abolished in fact on the days in question. If the same were in fact abolished, then Carrier's presentation would carry weight. However, from the record, such is not the case. As the work remains, Carrier cannot, by the method used, transfer the

work in question to others than those who have been performing the same. As stated, we do not consider that the work in question was in fact abolished.

Therefore, Claim (a) should be sustained. Claim (b) is sustained as to named Claimants and denied as “* * * to any other train dispatcher so adversely affected, * * *” as being too indefinite to permit sustaining the same.

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

Claim (a) sustained. Claim (b) sustained as per Opinion, and denied as to others adversely affected.

AWARD

Claim (a) sustained.

Claim (b) sustained in part, denied in part as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.

DISSENT TO AWARD NO. 6886, DOCKET TD-6773

The majority in this Award committed error in holding that since November 23, 1952 “this work is performed on Saturdays and Sundays.” The record contains no evidence whatever showing that “on the spot” supervision was performed or needed in the periods involved.

For this reason we dissent.

(s) R. M. Butler
(s) W. H. Castle
(s) C. P. Dugan
(s) J. E. Kemp
(s) E. T. Horsley