

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

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

(a) Claim of the American Train Dispatchers Association that the Nashville, Chattanooga & St. Louis Railway, hereinafter referred to as "the Carrier," did not comply with the provisions of the Train Dispatchers' Agreement, particularly Article I—(b) 2 thereof, when on June 18 and 29, 1955, on July 11, 13 and 28, 1955, it required train dispatchers in its Cowan, Tennessee office to, in addition to performing the train dispatcher duties of their assignment, perform the duties of Telegraphers, which work is outside the scope of the Train Dispatchers' Agreement, effective April 1, 1945.

(b) The Carrier shall now pay to the below listed train dispatchers whom it required to perform Telegrapher duties, as referred to in above Section (a), one day's pay at the rate paid Telegraphers at Cowan, Tennessee for each day shown, viz:

1. W. C. Brown: 1 day, i.e., for June 18, 1955
2. R. C. Koonce: 1 day, i. e., for June 29, 1955
3. C. R. Besheres: 3 days, i. e., for July 11, 13 and 28, 1955

EMPLOYES' STATEMENT OF FACTS: There is a Schedule Agreement between The Nashville, Chattanooga & St. Louis Railway and its Train Dispatchers represented by American Train Dispatchers Association, governing Hours of Service, Working Conditions and Rates of Pay, effective April 1, 1945. Said Agreement and revisions thereof to January 1, 1954 are on file with your Honorable Board and by this reference are made a part of this submission as though fully incorporated herein. The following rules are pertinent to adjudication of this dispute:

"ARTICLE 1

"(a) Scope.

"The term 'train dispatcher,' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra dispatchers. It is agreed that one (1) chief dispatcher on each division shall be excepted from the provisions of this agreement.

does not provide for the penalties asked; (3) the Telegraphers have made a concession in their rights to such work insofar as dispatchers are concerned, under the terms of their agreement; (4) coupled with the fact the practice under Operating Rule 216 was not abrogated by the negotiation of the Dispatchers' Agreement—there is no basis for the Train Dispatchers to be sustained in their claim as presented and same should, therefore, be denied.

The issue in the instant case has heretofore been considered and denied by this Division in its Award No. 6379.

* * * * *

The Carrier, by reason of the fact the case has not been discussed in conference as required by the Railway Labor Act, cannot make the required affirmation.

(Exhibits not reproduced).

OPINION OF BOARD: Reparations are here sought to the extent of a day's pay, Telegrapher's rate, for each of the specified dates, in behalf of the three named Claimants, each of whom are Train Dispatchers, account of performing telegrapher work, which it is alleged, was outside the scope of the Train Dispatchers Agreement and specifically in controversion of Article 1 (b) 2 of said agreement which reads as follows:

"Article 1 (b) 2. Trick Train Dispatcher.

"This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train order, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work."

At Cowan, Tennessee, Telegrapher Service is maintained from 8:00 A. M., to 9:00 P. M., Monday through Friday, with service 8:00 A. M., to 4:00 P. M., on Saturday. Train Dispatchers are on duty on an around the clock basis. A portion of the trackage in question is under C.T.C. control with the remainder operating on Train Order and timetable instructions.

The Organization contends that the Claimants were improperly required to handle train orders in conjunction with the train order portion of this trackage on each of the days in question. It is asserted that the Scope Rule does not include the copying or delivering of train orders; and that this type of work was never performed by Dispatchers either prior or subsequent to the execution of the effective agreement, thus negating the possibility of an existing custom or practice.

The respondent asserts that there is no rule in the confronting agreement restricting the right of it (Carrier) to require that Train Orders be delivered to Train Crews by Train Dispatchers; but rather that the Scope Rule thereof contemplates that the performance of such duties shall be, when necessary, performed by this craft. The Carrier further pointed out the Operating Rule 216 which had been in effect since July, 1906, was never abridged by any agreement, or thru negotiation; and thus clearly covered the delivery of train orders by Dispatchers.

It is unquestioned that a Train Dispatcher has direct and primary responsibility for train movements over the trackage in his District. Here Operating Rule 216 covers the handling and delivery of Train Orders by Dispatchers. A scrutiny of the Scope Rule indicates that such rule contemplates the delivery of train orders as a function properly incident to, or part of the work usually performed by Train Dispatchers. Award 5468.

This Board in Award 6379 stated:

"The Board must find from the evidence that the duties described are not in violation of the Agreement. No specific pro-

vision has been cited which would prohibit the assignment of the specified duties. The evidence is that Carrier's Operating Rules * * * contemplate that the employees will do the work referred to in their claim. * * * The Operating Rules are not in conflict with any provisions of the Agreement. * * *

What was true there is likewise true here and a sustaining claim is not justified.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.