Award No. 7770
Docket No. TD-7244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON & QUINCY RAILLROAD COMPANY

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

(a) The Chicago, Burlington & Quincy Railroad Company, (hereinafter called "the Carrier"), violated and continues to violate the existing Agreement between the parties to this dispute in requiring and permitting employes and/or supervisory officers not within the scope of said Agreement to be primarily responsible for the movement of trains between East Switch, Council Bluffs, Iowa, and Union Pacific Transfer, (hereinafter called "U. P. Transfer").

(b) The Carrier be required to compensate Train Dispatchers D. P. Vetterick, E. E. Phillips, J. E. Pace, M. B. Grover, K. W. Bowman, K. E. Welcher and D. H. Seeger for each day on and after August 15, 1953, on which said respective claimants were available to perform the service referred to in Paragraph (a) above and were not used; compensation to be at time and one-half rate of trick train dispatcher's pay rate for a maximum of nine (9) hours for each day.

(c) The Carrier be required to return the primary responsibility for the movement of trains between East Switch, Council Bluffs, Iowa, and U. P. Transfer to the train dispatcher craft or class in accordance with the requirements of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date March 1, 1943, a copy of which, together with any amendments thereto, is on file with this Board. Said Agreement is by reference incorporated into this submission the same as though fully set out herein. For ready reference Rule 2 of Article I is here quoted in full:

"DEFINITION OF TRICK TRAIN DISPATCHER"

"RULE 2. This 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

Should the Third Division decide to make an inquiry to the merits of this dispute, it will find that—

1. Yard movements involving use of the main line track at Council Bluffs are not included in the scope rule of the dispatchers' agreement, because such movements are not "trains," and have never been recognized as such, since they do not display markers.

2. The practice on the property at Council Bluffs, as well as many other points on this property, supports Carrier's position that dispatchers have no authority or control over any yard movements.

3. The installation of CTC did not bring about a transfer of work away from the dispatchers at Creston, nor did it constitute a violation of their agreement in any respect.

4. The arguments advanced by the Organization regarding violations of Operating Rules are utterly unfounded, do not evidence an infringement upon the dispatchers' employment domain, and will not support this claim.

In view of the above and foregoing, this claim must be denied in its entirety.

All data herein and herewith submitted has been previously submitted to the Employes.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute involves the responsibility for the movement of trains, engines and cars over some two-and-one-half miles of Carrier's main track at Council Bluffs yard between East Switch and UP transfer. On October 19, 1948, Carrier put into operation between these two points a signaling system known as Centralized Traffic Control (CTC). Prior to the installation of CTC, train movements between the points involved were made by timetable and train order authority from the train dispatcher located at Creston. Under Operating Rule No. 93, yard movements on the main tracks within the yard were made by the yardmaster and the yard crews without the knowledge or consent of the dispatcher. That is, the yardmaster decided when and in what order such movements were to be made and gave this information to the yard crews, and the yard crews, who could get on and off of the main tracks by means of manually operated switches, had the responsibility of keeping off of the main tracks in advance of scheduled first-class trains while accomplishing the movements. All second class, extra trains and engines were required by Operating Rule No. 93 to move within yard limits prepared to stop if the track was occupied.

After the installation of CTC, all movements on the section of main tracks involved were controlled from a CTC Control Panel in Grow Tower, which was located within the yard; and all trains moving over the territory controlled by CTC did so on the authority of and in accordance with the CTC signal indications. Since the territory under CTC began at Pacific Junction, some 16 miles southeast of Council Bluffs yard, the yard limit signs were removed and Operating Rule 93 was no longer applicable to Council Bluffs yard after the installation of CTC. Under CTC all main track switches are under the control of and can only be operated or unlocked for manual operation by the operator at the CTC control panel; thus, after October 19, it was no longer possible for the yard crews to enter or leave the main tracks by themselves as they had prior to the installation of CTC. They could now only get on or off the main tracks by requesting the operator at Grow Tower to throw or unlock the switches for them.

Apparently, some question arose as to the proper division of authority between the yardmaster and the dispatcher shortly after the installation of CTC, and the Carrier resolved this question by issuing certain instructions on December 14, and 15, 1948, which instructions provide the basis of the

claim in this case. On December 14, the assistant superintendent at Creston issued the following instructions to the train dispatchers at Creston and the operators at Grow Tower:

> "Before the CTC was placed in service at Council Bluffs switch engines worked under the direction of yardmasters and the dispatchers were not consulted in connection with their movement.
>
> "I think we should continue to handle in the same manner with the CTC, that is the yardmaster instruct how and when he wants to move them inside yard limits."

On December 15, the division superintendent issued the following instructions to the assistant superintendent and chief dispatcher at Creston, with copies to the train dispatchers at Creston and to the yardmaster and operators at Council Bluffs:

> "Time Table instructions No. 3, page 20, reads in part as follows:
>
> > 'Movement of trains or engines against the current of traffic . . . between Co. Bluffs Yard and M. P. 492.8 will be made on authority of the yardmaster.'
>
> "These instructions have not been cancelled and are still in effect. Furthermore we will hold the Yardmaster at Council Bluffs responsible for directing the movements of trains or engines between Co. Bluffs Yard and UP Transfer for the reason that there are so many switch engine movements being made in this territory that it will be necessary for the yardmaster to decide the preference movement.
>
> "Dispatchers and operators will therefore comply with the directions of the yardmaster in this respect."

The claim is that by these instructions and the actual operations under them, Carrier has violated the Agreement by requiring employes not within the scope of the Agreement to be "primarily responsible" for the movement of trains between the two points in question. The claim rests on Rules 1 and 2 of the Agreement and, in addition, various operating rules and timetable instructions are also cited in support of the claim.

Rule 1 of the Agreement is entitled "Scope" and reads as follows:

> "This agreement shall govern the hours of service and working conditions of train dispatchers.
>
> "The term 'train dispatcher' as herein used shall include all train dispatchers except one Chief Train Dispatcher in each dispatching office."

Rule 2 is entitled "Definition of Trick Train Dispatchers" and reads as follows:

> "This 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."

The claim must stand or fall on the rules above cited, for since the operating rules are established unilaterally by the Carrier, they may be changed unilaterally, and a departure from the practice prescribed in these rules is not comparable to a violation of Agreement rules. The essence of petitioner's contention with regard to the violation of rules 1 and 2 is that

under CTC, all movements over the tracks governed by CTC are of the same nature since all are made by the authority of the CTC signal indications solely. There is thus no distinction under CTC between a movement which would have been considered a yard movement under the previous train order and timetable method of control and a movement which would have been considered a train movement under that system of control. All movements under CTC, it is asserted, are movements of trains and thus the primary responsibility of the dispatcher, who exercises this responsibility through his supervision of the operator at Grow Tower who actually controls the CTC panel. The instructions which give the yardmaster responsibility and authority to direct the operator as to the movement of trains or engines between the points in question, deprived the dispatcher of his "primary responsibility" for the movement of trains which is given to him by the Agreement rules.

The Carrier contends that there must be a distinction made between the movements which, although they are now under CTC, are still the same "yard movements" as were made prior to CTC by the yardmaster and yard crews without authority of the dispatcher, and the movements of "trains" which were always the responsibility of the dispatcher and were made under his authority prior to CTC. Carrier contends that as to these latter, despite the apparently all-inclusive wording of the December 15, 1948 instructions, the dispatcher in fact still retains primary responsibility and full control. Thus, as to "train" movements, the parties are actually in agreement that the dispatchers have primary responsibility for them; the disagreement is whether as a matter of fact any implementation has been given to the instructions of December 15 giving yardmaster authority over "train" as well as "engine" movements.

As to the "yard movements", Carrier insists that these are not trains and were not regarded as such prior to CTC so as to make dispatchers primarily responsible for them; rather, as set forth above, the yardmasters and yard crews always made these movements without any authority from the dispatcher and are continuing to do so in as nearly the same manner as possible under the mechanical changes which are necessary to CTC operations.

Petitioner has made clear in the record how it thinks these yard movements shoud take place in order to conform to the rules. It asserts that instead of the yardmaster having authority to direct the operator to allow such movements on and off of the main tracks, the proper procedure would be for the yardmaster to request permission for each such movement on the main tracks from the operator, and for the operator in turn to request permission from the dispatcher at Ottumwa (where the dispatcher formerly at Creston is now stationed), and to receive permission from the dispatcher before he permits the proposed yard movement. We do not find support for this contention in rules 1 and 2 of the Agreement. It is our conclusion from the record that prior to CTC and under these same rules, the yard movements under discussion were not considered by the parties to be movements for which the dispatcher was primarily responsible, since they were made by the yard crews on the authority of the yardmaster under Operating Rule 93.

While we understand petitioner's position that with the disappearance of yard limits and thus of the effectiveness of Operating Rule 93, the yard movements assumed a status similar to the movement of any other train over the disputed section of track, we cannot agree with it. It is beyond question that the Carrier has the right to take advantage of technological improvements and to install them for the better and more efficient operation of the railroad. We think it equally well established that new and improved mechanical methods of performing work do not operate to take the work away from the employes who have a right under contract to perform it. In this case, as to the yard movements, we do not think that any work has been taken away from the dispatchers. On the contrary, it appears to us that the Carrier has attempted to continue to have this work performed in as nearly the same manner, by the same employes, after the installation of CTC as it was performed prior to the installation of that improved equipment. We think that this is the true test of whether there has been a violation of the agree-

ment, rather than a technical discussion as to what is or is not a "train" under CTC operation based on operating rules and definitions contained therein. It appears to us that primary responsibility for these yard movements on the main tracks resides in the same position now as it did prior to the installation of CTC—in the yardmaster. It is argued that even prior to CTC, if a scheduled train was late or the yard crew had not actually seen it come through the yard, it was necessary for them to receive permission of the dispatcher in order to enter the main tracks. We think this is no less true under CTC. In such a situation the operator is subject to the authority of the train dispatcher at Ottumwa, rather than that of the yardmaster. To the extent that the claim relates to "yard movements" as discussed above, it is denied.

We have no hesitation in holding as to so-called "train movements", as distinquished from the yard movements discussed above, that primary responsibility therefor belongs to the dispatcher; and that to the extent that the instructions issued by the Carrier purport to give any such responsibility to the yardmaster, the agreement is violated. However, it is impossible to determine from this record whether any responsibility with respect to such trains is in fact exercised by the yardmaster. The petitioner asserts that the responsibility for the movements of all trains over the disputed area is given to the yardmaster according to the instructions of December 15, 1948, and that therefore none remains in the dispatcher. Affidavits from dispatchers recite this to be so, and the instructions say so in specific terms. However, the concept of "responsibility" is nowhere reduced to a description of the actual work which this "responsibility" requires to be done. Carrier asserts that the yardmaster in fact has no responsibility for, and performs no service in connection with through trains, but that all responsibility for such trains, as distinguished from yard movements, resides in the dispatchers. It asserts this, despite the apparent contrary provision of its instructions. We are unable from this record to determine whether or not any actual duties with regard to through trains passing between the two points in question have been removed from the dispatcher. If they have, it amounts to a violation of the Agreement, and such duties should be restored to the dispatcher; the parties should make every effort to reach agreement on this factual question. Insofar as the claim relates to train movements other than the "yard movements" discussed above, it is dismissed without prejudice to a further submission which expressly indicates the precise work which is involved and presents the Board with evidence upon which it can make an intelligent determination of this question.

The problem of attempting to apply scope rules and practices which have developed under one method of operation to the conditions which are brought about by new and improved mechanical methods of operation is an extremely difficult one. It deserves the best efforts of which parties to agreements are capable in order to accomplish the necessary changes in accordance with the spirit and intention of their agreements. The complex and involved arguments and contentions set forth in the record here have made it doubly difficult for the Board to attempt to reach a solution to the problem presented and do not represent the type of approach most likely designed to succeed in the solution of this difficult problem. It is to be hoped that the views set forth in this Opinion will be of some help to the parties in working out a satisfactory method of applying the Agreement rules to the changed methods of operation which will conform to the intention of the Agreement and be satisfactory to both parties.

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

(1) That the Agreement was not violated with respect to the "yard movements" involved in the claim; (2) that there is no sufficient evidence on which to base a finding as to the "train movements" involved in the claim.

AWARD

Claim denied in part and dismissed in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 1st day of March, 1957.