

Docket No. TD-7661

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the American Train Dispatchers Association that when The Texas and Pacific Railway Company, hereinafter referred to as "the Carrier," instructed its train dispatchers at Alexandria, Louisiana, to also on September 6, 1954, on November 25, 1954, on December 25 and 26, 1954, on January 1, 1955 and on February 22 and 23, 1955, perform work which on all other dates is performed by telegraphers whom the Carrier employs in its "WH" office at Alexandria, the train dispatchers involved were required by the Carrier to perform work outside the scope of Article 1-(b), i.e., the work definition rule of the current agreement between the parties to this dispute.

(b) The Carrier shall now pay to the below listed train dispatchers who complied with the above mentioned Carrier's instructions a day's pay for each date shown at the rate paid telegraphers in the Carrier's "WH" office at Alexandria, who on all other dates performed this work, viz:

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| 1. | C. J. Dupont: | 2 days, i.e., | for September 6, 1954 and
for February 22, 1955. |
| 2. | H. M. Hawthorne: | 3 days, i.e., | for November 25, December 25,
1954, and for January 1, 1955. |
| 3. | J. C. Nelson: | 1 day, i.e., | for December 26, 1954. |
| 4. | L. B. Rabalais: | 1 day, i.e., | from 11:45 PM January 1 to
7:45 AM January 2, 1955. |
| 5. | W. J. Davis: | 1 day, i.e., | for February 23, 1955. |

EMPLOYEES' STATEMENT OF FACTS: There is a Schedule Agreement between The Texas and Pacific Railway Company and the American Train Dispatchers Association, governing hours of service, Compensation and Working Conditions of Train Dispatchers, effective September 1, 1954. Said Agreement is on file with your Honorable Board and by this reference is 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. This agreement shall govern the hours of service, compensation, and working conditions of train dispatchers. The

certainly it may properly be done by a train dispatcher—an employe whose primary duty it is to provide for the movement of trains by train orders, or otherwise. On the Louisiana Division, where this claim arises, trains are governed by train orders and time table. If your Board should fail to sustain the Carrier's position here, you would, in effect, rule that handling of train orders is not as closely related to a dispatcher's duties as it is to a brakeman's duties, and that just can not be so. The terms "train orders" and "train dispatchers" are as closely related as "switching" and "switchmen"; "braking" and "brakemen" or "telegraphy" and "telegraphers". If train dispatchers cannot be required to handle train orders, then the basic operational methods of railroading have been out of kilter ever since the first locomotive turned its wheels on the rail lines of this Nation. The history of the operating rule involved, which we cited above, is conclusive in this respect.

We respectfully urge that the claims are entirely without merit, and request your Board to so decide.

It is affirmed that all data submitted herein in support of the Carrier's position has heretofore been presented to the Organization and is hereby made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The material facts are not in dispute. At Alexandria, Louisiana, the Carrier's division headquarters, there is maintained on the second floor of the office facilities a train dispatchers office on an around-the-clock basis. On the first floor of the same building the Carrier maintains a telegraph office, known as "WH" office in which are assigned two telegraph positions; first trick 9 A.M. to 5 P.M., third trick 11:45 P.M. to 7:45 A.M., with no one on duty in "WH" office from 5 P.M. to 11:45 P.M. or from 7:45 A.M. to 9 A.M. Assigned weekly rest days for those two assignments are Saturday-Sunday and Thursday-Friday respectively. Both telegraphers are relieved on their rest days.

This claim arose because on the dates specified, all legal holidays, the Carrier required Claimants, in addition to their own assignments, to receive train orders from Missouri Pacific Railroad Train Dispatchers at Monroe, Louisiana, and from Gulf Coast Lines Train Dispatchers at DeQuincy, Louisiana, and to deliver train orders and clearances to train crews of those lines as well as to Texas and Pacific Railway Crews.

The Organization contends that the dispatcher claimants performed service on the dates in question, which was that of telegrapher assignments and therefore were required to perform work outside the scope of Article 1 (b) of the Agreement. The claim is for a day's pay for each date at the rate paid telegraphers in the "WH" office.

The Carrier contends that the rules of the Agreement contemplate train dispatchers performing the service required of claimants, i.e., "related work"; that operating rules of the Carrier require train dispatchers to perform the service performed by claimants; and that practice on the property at the point involved shows the intent and understanding of the rules involved coincide with Carrier's interpretation thereof.

The rules cited and relied on by the parties are herein set forth:

"Article 1.

"(a) Scope. This agreement shall govern the hours of service, compensation, 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 train dispatcher in each dispatching office shall be excepted from the scope and provisions of the agreement.

“(b) Definitions

“1. Chief, Night Chief, and Assistant Chief Dispatchers. These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; to perform related work and rendition of required reports, etc.

“2. Trick, Relief, Extra Train Dispatchers. 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. This definition does not change the work jurisdiction of train dispatchers.”

Article 20 (d) of the Agreement between the Carrier and the Order of Railroad Telegraphers:

“No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call. The employe entitled to call will notified.”

Rule 210 (a) Uniform Code of Operating Rules:

“210 (a). Orders delivered by Train Dispatcher. For train orders delivered by the train dispatcher, the requirements as to the record and delivery are the same as at other offices.”

Before addressing ourselves to the merits contentions made at panel argument before this referee, concerning improper inclusion of certain statements in the record, require disposition. Notice of intent to file the Ex Parte Submission herein was served on June 1, 1955. Carrier Exhibits A, B, C, D, E, and F, by reason of their dates, could not possibly have been presented to the Employes and made a part of the question in dispute as required by Circular No. 1 of this Board. Petitioner's Exhibits TD 1 and 2 are likewise improperly before us. Both sets of exhibits, each referring to past practices on the property, will not be considered in arriving at our conclusions.

The issue before us is whether or not train dispatchers, in addition to their regular assignments, can be required to copy train orders and clear trains in the absence of regularly assigned telegraphers? Implicit in deciding that issue are two further questions 1) did the telegraphers under their Agreement have the exclusive right to perform such duties and 2) if they did not, was such assignment to train dispatchers “related work” as referred to in Article 1 (b) above.

Considering together Article 1 (b), with particular reference to the last sentence thereof, Article 20 (d) of the Telegraphers Agreement, operating Rule 210 (a) and past practices as established in this record we are compelled to conclude that telegraphers did not have the exclusive right to perform the duties in question and when performed by train dispatchers it was “related work.” This conclusion then resolves the issue before us and leads us to the further conclusion that the Carrier did not violate the Agreement in assigning the work in question.

The petitioner has stressed the fact that Claimants were required to receive train orders from, and deliver clearances to, train crews of foreign lines. Alexandria Terminal, where the work was performed, is controlled by

the Texas and Pacific Railroad Company. It is not uncommon for a railroad to have trackage rights over a foreign line. Whether or not the claimants were joint employes is not paramount; the fact that they performed the services by direction of the Carrier who was party to their Organization's Agreement is the decisive factor.

Petitioner also urges the reasoning of this Board as enunciated in Award 4635 for authority here. This Award was cited by the employes in the docket involving Award 5018 and rejected. The Board in that case, Award 5018, in a well reasoned opinion with Referee Parker sitting as a member said, after determining that the work there involved was "related" under an almost identical rule as herein, absent the last sentence that appears in Article 1 (b):

"But even if we had failed to reach the conclusion just announced there is another sound reason why this claim would have to be denied. The decisive principle is so well stated in Award No. 4572 we need only to quote it.

"In the Opinion of that case it is said:

"The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employe covered by the agreement. The scope rule simply specifies the employes covered by the agreement and establishes the various types of work to which the covered employes are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employes.

"Generally it is the suspension from an employe's regularly assigned duties, for the purpose of performing other duties which gives rise to valid claims for compensation for the performance of other duties. See Awards Nos. 3417, 3418, 4352 and 4539. No such suspension is alleged or shown here.'"

This holding in Award 5018 is equally applicable to the factual situation in the instant case.

The decisive principle set forth in Award 5468 is also peculiarly pertinent and persuasive here. We feel it merits quotation. In the opinion of that case it is said:

"The work performed by the train dispatcher alleged in the claim to belong to claimant as the occupant of the first trick telegrapher's position had to do with the clearances of trains at Eau Claire. The evidence describes additional work such as the obtaining of weather reports, morning reports, train consists and reports on train movements. The Carrier asserts that this is work which a train dispatcher may properly perform and that train dispatchers have performed this work for more than thirty years on this Carrier. The record does not establish that the work performed by the dispatchers on the two holidays involved belonged exclusively to the telegraphers. We think it was incidental to or a part of the work usually performed by train dispatchers. Award 4922 sustains this view. The claim must fail for want of sufficient proof that the work in question has been contracted exclusively to the telegraphers."

See also Award 6379.

The foregoing conclusions preclude a sustaining award.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.