Award No. 8840
Docket No. TD-8806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY

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

(a) The Staten Island Rapid Transit Railway Company, (hereinafter called "the Carrier"), violated and continues to violate the existing agreement between the parties to this dispute, when, effective May 2, 1955, authorization for the movement of trains between east end double track (E.D.T.) A. K. Bridge and Cranford Junction was transferred from the jurisdiction of train dispatchers to that of employes and/or supervisory officers not covered by the Agreement.

(b) The Carrier be required to compensate train dispatchers E. Van Name, F. J. Deuble, W. J. Curry, R. G. Murrell and J. J. Rumolo, or their successors, for each day on and after May 2, 1955, on which said respective claimants were available to perform the service referred to in paragraph (a) above and were not used, and until the violation ceases. Compensation to be at time and one-half rate of trick train dispatcher's pay when available and not used on a regularly assigned rest day.

(c) A joint check of the Carrier's time rolls (Pay rolls) shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine the available dates of those entitled to the payments required by paragraph (b) of this claim.

(d) The Carrier be required to return the authorization for the movement of trains between east end double track (E.D.T.) A. K. Bridge and Cranford Junction 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 of May 26, 1945, a copy of which, together with any amendments thereto, is on file with this Board. Said

Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that prior to May 2, 1955, Carrier's trains were operated and movement of trains between East end double track A. K. Bridge and Cranford Junction controlled by train orders issued by Train Dispatcher at St. George through the operator at Arlington. By the issuance of General Order No. 9, by Carrier, effective May 2, 1955, the train order station at Arlington was abolished, the Arlington Yard limits were extended from Arlington to Cranford Jct., placing in effect Operating Rule No. 93, and referring all train movements under authority of the Yardmaster at Arlington. On May 15, 1955, Carrier issued its General Order No. 10, effective May 2, 1955, modifying General Order No. 9 to the extent that Operating Rules 111, 112 and 200 were not in effect between E.D.T. A. K. Bridge and Bantas, also that yard switching limits had not been changed. Due to changes enumerated in operation of trains between A. K. Bridge and Cranford Jct., the Organization makes claim that Carrier has removed the work of train dispatchers in the operation involving train movements and permits such work to be performed by Yardmaster and other supervisory officers not covered within the Train Dispatchers' Agreement.

The parties agree that train movements between A. K. Bridge and St. George has been under the supervision of Yardmasters and other employes for many years. The parties also agree that only the train movements between E.D.T. A. K. Bridge and Cranford Jct. are here involved. The record is clear that prior to May 2, 1955, movement of trains by train orders was performed by the dispatchers' office at St. George. Switching limits of Arlington Yard were in no way extended by General Orders 9 and 10, only the yard limits were involved.

Carrier contends that the Scope Rule of the effective Agreement does not extend to cover authority governing train movements of trains within yard limits and further that it has a right, where the change in yard limits as made here, to transfer such authority concerning the movement of trains to yardmasters. Carrier further contends it has not abolished any dispatcher positions, no dispatchers have suffered a monetary loss, and actually train dispatchers perform less work since Carrier made the changes in operation on May 2, 1955.

While Carrier has a right under Rule 93 to operate trains, within yard limits, without the necessity of train orders, we must consider the record before us. There is evidence that on three occasions Carrier did by oral instructions from its Yardmaster require conductors to take train orders relating to meeting of trains, waiting on siding at definite locations for trains passing, all such instructions relating to train orders in the newly established yard limits. This being true, and considering the fact that prior to the change in yard limits between A. K. Bridge and Cranford Jct., the matter of handling movement of trains was performed by dispatchers located at St. George. But Carrier, by its general orders issued, deprived the dispatchers of the work formerly performed by them and required such service to be performed by yardmasters. While the record before us is not entirely satisfactory as to a showing by the Organization that Carrier required the yardmasters to perform the work generally, the evidence is sufficient to justify a conclusion that the contention has merit and Carrier has permitted a portion of the work pertaining to train orders and instructions relating to passing trains, and taking siding, to be given to yardmasters, even though such complained

of train movements were in the newly established yard limits. Such conclusion by the Board is based upon the record and is limited strictly to the case before us.

Having reached the above determination we sustain paragraph (a) of the claim as made.

Paragraph (b) will be sustained as to all named claimants insofar as such named claimants were available for service as set out in Claim (a). All other unnamed claimants, as alleged, are too vague, uncertain and indefinite, and such claims shall be denied. In view of the position taken by this Board in numerous cases, the claims for all overtime are too indefinite, vague and uncertain and there being nothing in the record to support such overtime claims, they will be denied.

As to claim (c), this portion will be denied for reasons stated in Claim (b).

Claim (d) should be dismissed, since the Board has no authority to sustain such claim.

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 Carrier has violated the Agreement between the parties.

AWARD

Claim (a) sustained.

Claim (b) sustained in part and denied in part.

Claim (c) denied.

Claim (d) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1959.

DISSENT TO AWARD NO. 8840, DOCKET NO. TD-8806

It is difficult to make an intelligent dissent to any award which is so patently incomprehensible that we frankly do not know how the Carrier could comply with it. The Majority concedes that under Rule 93 Carrier had the right to operate trains and engines within yard limits without train orders. The Majority further concedes that Carrier had the right to extend

yard limits to include tracks on which train and engine movements had heretofore been authorized by train orders issued by the train dispatchers. The only way this claim could have been sustained was on a finding that yardmasters, or some one other than train dispatchers, issued bona fide train orders in the same manner and form that train dispatchers had previously done. Inasmuch as the Petitioner did not even allege that bona fide train orders were issued by any train or engine movement within the yard limits involved in this dispute, the Majority rightfully had no alternative but to deny this claim. Instead, by some process of imagination, totally unsupported by any evidence, the Majority found that on three occasions yardmasters required conductors "to take train orders".

The Carrier never attempted to camouflage the fact that train and engine movements within the newly established yard limits were to be authorized by yardmasters in the same manner as at any other yard. In fact, General Order No. 9 so provided. From time immemorial yardmasters have had charge of the movement of trains and engines in yards located in their territory. This is a primary reason for employing yardmasters. The three instances of an alleged telephone conversation between the yardmaster and train and engine crews contained in the Record should have been ignored, because they were never considered nor discussed on the property and were submitted in direct disregard to the Rules of this Division; nevertheless, these alleged conversations were simply oral instructions in connection with planning of work of the type issued by yardmasters in the entire industry. Further, in Award No. 94 of Special Board of Adjustment No. 132, Referee Francis J. Robertson dealt with conversations identical to those involved here, and arising within the same yard limits, and found that "when crews call the yardmaster no record of location or time is kept." Obviously, when a yardmaster issued instructions to a conductor in person, or via telephone, the conductor was not relieved of his primary responsibility for his own train or engine movement pursuant to Rule 93. But, if a yardmaster cannot plan and arrange train and engine movements made under Rule 93 within his yard, chaos will result where order should prevail.

This Division has enough difficulty making awards that conform to the facts. When it delves into the miraculous and turns oral yard instructions into bona fide train orders its awards become a tragic farce.

For the foregoing reasons, among others, we dissent.

/s/ **R. M. Butler**

/s/ **J. F. Mullen**

/s/ **W. H. Castle**

/s/ **C. P. Dugan**

/s/ **J. E. Kemp**

COMMENT UPON DISSENT TO AWARD 8840, DOCKET TD-8806

As the records of this Division disclose, it is only upon extremely rare occasions that a Labor Member of this Division takes cognizance of any of the innumerable dissents entered by Carrier Members. This is for the obvious reason that such expressions of opinion are NOT a part of our Awards and therefore have no standing, as this Division has had occasion to note.

Moreover, it is significant to also point out the fact, which the Division's records also disclose, that it is only upon equally rare occasions that a Referee even deigns to acknowledge the existence of such unilateral points of view. However, in extreme instances where, as here, the contrary view expressed by the Carrier Members is so palpably distorted, diversionary and incomplete, some comment is warranted. This for the reason so correctly pointed out by Referee Johnson in his comment upon Award 2455, that—

> ". . . the adjudication of controversies must depend, not upon the conclusions stated by the contesting parties, but upon the facts shown by them. . . ."

The record and the briefs presented in this dispute make it abundantly clear that at the time the Agreement was negotiated, and subsequent thereto until on or about May 2, 1955, the work of directing train movements over the mileage here involved was that of Train Dispatchers. The record is replete with Carrier admissions of this basic fact.

And the document submitted by the Carrier Members herein understandably ignores the undoubted fact, made clear in the record, that there is a most material distinction between road service train movements extending through and beyond both yard and switching limits and the movements relating to purely yard engine operations. The Carrier Members comment is also understandably silent in respect to the fact that Rule 93, upon which Carrier places exclusive reliance in support of its action, has reference to the movement of trains and NOT BY DIRECTION. The document here in reference also would disregard the fact that Carrier's own operating rules relating to the authority, duties and responsibilities of Yardmasters are completely devoid of ANY reference to, much less the responsibility for, the movement of trains or engines by that craft or class of supervisory employes.

The Carrier Members somewhat captious and dyspeptic complaint urges that the record of certain telephone conversations is improperly before us. However, as the record makes abundantly clear, Carrier had full opportunity to raise any proper objection. Having failed to do so, it has, pursuant to a long line of this Division's Awards, been foreclosed from asserting any such objection when the claim comes here. In any event, the conversations referred to are merely illustrative of the implementation of Carrier's own general orders and instructions cited and quoted in the record. It is those general orders and instructions which clearly establish the basic fact that work was taken from the Employes and transferred to others outside the scope of the Agreement.

It is very clear from an examination of Docket TD 8806 that Carrier's unilateral action in changing its yard limits and transferring the work of directing the movement of trains, relying only upon Rule 93 to do so, (but without changing switching limits) was simply a device for effecting, by indirection, that which it is prohibited from doing directly. This is pointed out in the brief filed on behalf of the Labor Members. That brief also points out and cites authority for the established principle that such indirect action is improper and cannot be sustained.

The Awards of Special Board No. 132 noted in the brief on behalf of the Carrier Members, involve another Organization, another Agreement and another issue—that of communications. No such situation or issue is before us here, and the Awards in reference are quite inapposite.

Award 8840 correctly holds that the Agreement was violated. And as this Division has many times held, the violation of the Agreement is the important thing. Reparations, therefore, are but an incident to the claim.

R. C. Contis
Labor Member

Chicago, Illinois
June 1, 1959