

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
— Eastern Lines —

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

(a) The Atchison, Topeka and Santa Fe Railway Company, hereinafter called "the Carrier," failed to comply with the controlling Agreement between the parties to this dispute when it permitted and required and continues to permit and require employees not covered by that Agreement to perform train dispatcher work on a portion of its Illinois Division between Joliet U.S. and Nerska and on its Chicago Terminal Division between Nerska and Mile Post 3.1, work which belongs to its train dispatchers in Carrier's train dispatching office located at Chillicothe, Illinois.

(b) Carrier shall now compensate Train Dispatcher J. D. Hunter, of its Chillicothe, Illinois office one day's pay at trick train dispatcher's daily rate of pay for failure to use him to perform train dispatcher service November 30, 1953, when it permitted Train No. 16 to be directed to move from Nerska to Mile Post 3.1 on the Westward Main Track without the train order authority vested in the train dispatcher pursuant to the Agreement.

(c) Carrier shall similarly compensate the senior available train dispatcher holding seniority in its Chillicothe, Illinois office for any subsequent day or days on which such violation or violations of the Agreement complained of in paragraph (b) hereof, have or hereafter shall occur until the violation complained of herein has ceased.

(d) A representative of the Carrier and a representative of the American Train Dispatchers Association shall make a joint check to determine to whom and in what amounts compensation is due train dispatchers as set forth in Section (c) hereof.

EMPLOYEES' STATEMENT OF FACTS: There exists an Agreement between the parties to this dispute bearing an effective date of September 1, 1949, a copy of which is on file with this Board and by this reference is made a part of this submission as though fully set out herein.

Yard engines moves	— 12
Transfer engine moves	— 38
Passenger trains	— 23
Freight trains	— 26

Between 8:00 A. M. and 4:00 P. M. there is a switch engine assigned to take care of the industries located along the eastward main track and this engine, in switching these industries, is under the direction of the towermen continually making use of the eastward main line.

There are three interlocking plants within the confines of the territory involved, Nerska Mile Post 7.3 to Mile Post 3.1; i.e., at Nerska, Mile Post 7.3; Corwith, Mile Post 5.9; and Panhandle Crossing, Mile Post 4.4, where other railroads cross the Carrier's tracks at grade. The foreign line traffic over these crossings is extremely heavy and the towermen at these locations, in addition to handling other moves such as traffic reversals, must, of course, coordinate foreign line movements through these interlocking plants with movements on the Carrier's tracks eliminating delays to trains as much as possible.

From the foregoing it will be seen why it has never been and is not now practicable to extend the authority of the Dispatchers at Chillicothe by permitting them to authorize train movements confined entirely within the Chicago Terminal Yard limits in that such moves require the utmost cooperation between towermen at the several interlocking plants located therein and between these towermen and the yardmasters assigned to that territory. To handle otherwise would incur unnecessary delays both in train and switching movements.

In conclusion, the Carrier respectfully asserts that the claim of the Employees in the instant dispute is wholly without merit or support under either the "Dispatchers' Agreement effective September 1, 1949" or the Carrier's Operating and/or Time Table Rules as alleged and should either be dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Organization's ex parte submission or any subsequent oral argument or brief presented by the American Train Dispatchers Association in this dispute.

All that is herein contained has been both known and available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim concerns a dispute which arises within the yard limits of the Carrier's Chicago Terminal Division. The territory involved in this dispute is that territory which lies between Nerska and the drawbridge at M.P. 3.1. It is contended that when operators authorize movements against the current of traffic within yard limits or if the superintendent authorizes such movements, it is a violation of the Scope Rule of the Agreement between the parties. There are a great number of awards of this Division based upon the contention, as herein made, that the Scope Rule gives to the train dispatchers the right to perform the work in question, stating that

where, as here, the Scope Rule lists positions instead of delineating work, it is necessary to look to tradition, historical practice, and custom to determine the work which is exclusively reserved by the Scope Rule to employees covered by the Agreement.

The record before us does not show that train dispatchers have always issued train orders to direct movements of trains against the current of traffic within yard limits, nor does the record show that these claimants have or did have the exclusive right to direct such movements within yard limits. Therefore, the work involved in this claim has not been exclusively reserved to train dispatchers by tradition, historical practice, nor custom on this property. Under such circumstances, the claim is without merit.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1960.

DISSENT TO AWARD 9629 (DOCKET TD 8301)

The Award of the majority herein, it is submitted, is in disregard to the evidence of record and the precedent cited in support thereof.

The principle upon which the instant case bottoms—and which the majority has completely ignored—has been accepted and approved by this Division in previous basic Awards.

In Award 6885 the Board set out in clear and indisputable terms the rights of Train Dispatchers in the handling of movement of trains within the confines of so-called terminal switching limits—yard limits. In Awards 5628—7628—7575—7576, the Board similarly held. Thus, Award 9629 does little more than restate the established principle in respect to custom, history and tradition and does not pass upon the actual issues in evidence.

The Award, therefore, is in error and is devoid of any precedent value or effect.

H. C. Kohler

Chicago, Illinois
December 20, 1960