

Award No. 10720

Docket No. TD-12142

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Preston J. Moore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY

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

(a) The Louisville & Nashville Railroad Company, hereinafter referred to as "the Carrier" violated and continues to violate Article 1 of the effective agreement applicable to its train dispatchers employed on the Carrier's Nashville, Chattanooga & St. Louis District, when it required and permitted employees not within the scope of said agreement to perform service as Assistant Chief Train Dispatcher at Carrier's Tilford Yard, Atlanta, Georgia, on October 29, 30 and 31, 1959, and subsequent dates.

(b) Carrier shall now compensate Extra Train Dispatcher D. H. Carder for October 29 and 30, 1959, and Extra Train Dispatcher C. M. Baldwin for October 31, 1959, one day's compensation for each of said dates at pro rata rate of Assistant Chief Train Dispatcher, and that the senior available Extra Train Dispatcher be likewise compensated for each subsequent date until the said violation shall cease.

(c) That in event no extra train dispatcher was available on any such date, the senior regularly assigned train dispatcher be compensated for such violation on his regularly assigned rest days at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the parties, effective April 1, 1945, as subsequently revised, is on file with your Honorable Board and, by this reference, is made a part of this submission as though fully set out herein.

Rules pertinent to this dispute are:

"ARTICLE 1

"(a) Scope.

The term 'train dispatcher,' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra dispatchers. It is

Assuming, but not admitting, that the items included in the employees' evidence, Carrier's Exhibits, constitute service restricted to night or assistant chief dispatchers, some of the items are not of daily occurrence.

Carrier, therefore, submits the continuing portion of the claim is too vague and indefinite and therefore improper.

With the exception of Exhibit G which is dated November 11, 1959, the employees have produced no evidence in connection with their claim except for October 29, 30, and 31, 1959.

Carrier submits the evident facts do not support the employees' claim which is based on the contention that operators in "N" office and others not covered by the dispatchers' agreement are performing service restricted to night or assistant chief dispatchers.

The past practice, which has been followed for years, also is contrary to the contention now made by the employees.

In view of these circumstances carrier submits there is no basis for the employees' claim and same should, therefore, be denied.

Furthermore, the employees have submitted no evidence in support of their claim other than for the dates of October 29, 30, and 31, 1959.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The American Train Dispatchers Association and The Louisville and Nashville Railroad.

The employees contend that Carrier violated Article I of the Agreement.

"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."

"(b) Definitions.

1. Night Chief Train Dispatcher
Assistant Chief Dispatcher

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 employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

"c" Where existing payroll classification does not conform to Sections (a) and (b) of this Article, anyone performing service specified therein shall be classified in accordance therewith."

The issue is whether the employees at Tilford Yard, Georgia are performing work that belongs to Petitioner under the Agreement.

The telegraph operators probably performed many functions under the control of the Chief Dispatcher and many without specific direction. The chief taggers certainly performed none of the duties and functions spelled out for an Assistant Chief Dispatcher.

The Trainmaster, issued such orders as those appearing in the Record at Page 30.

None of these employees are acting in a supervisory capacity. This requires judgment or the making of decisions.

We have carefully studied all evidence submitted and cannot find sufficient evidence to warrant a finding that telegraph operators, chief taggers or the Trainmaster at Tilford Yard are performing duties that are reserved exclusively to Assistant Chief Dispatchers.

For the foregoing reasons, we believe there has been no violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.