

Award No. 11013

Docket No. TD-11260

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

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

(a) The Delaware, Lackawanna and Western Railroad, hereinafter referred to as "the Carrier" violated and continues to violate the currently effective agreement between the parties, including Article 1, Sections (a), (b) and (c), when on Wednesday, October 16, 1957 it abolished positions of Chief Train Dispatcher, Assistant Chief Train Dispatcher and Relief Chief Assistant Chief Train Dispatcher in its train dispatching office at Buffalo, New York, and transferred a part of the duties and responsibilities of these positions to the trick train dispatchers in its train dispatching office at Buffalo, New York, and the remainder of the duties and responsibilities to employees not covered by the train dispatchers agreement; namely, the Station Master at Buffalo, New York, and the Transportation Supervisors at Scranton, Pennsylvania.

(b) The Carrier shall now reclassify all trick train dispatcher positions in its Buffalo, New York train dispatching office to that of Assistant Chief Train Dispatcher in accordance with the provisions of Article 1(c) and shall, effective as of October 16, 1957, compensate the incumbents of these positions; namely, F. P. Wagner, J. T. Gilboy, A. A. McLaughlin and W. T. Ryan, or their successors, at the rate of Assistant Chief Train Dispatcher so long as they are required to assume the duties and responsibilities of Assistant Chief Train Dispatcher.

(c) The Carrier shall now pay to Train Dispatcher J. D. Waterman, Jr. the difference between train dispatchers' rate and what he earns in other service with the Carrier and to extra Train Dispatcher E. J. Juswick the difference between what he earns in other service with the Carrier and what he would earn as Extra Train Dispatcher beginning October 16, 1957, and continuing until the violation referred to in paragraph (a) is corrected.

(d) A joint check of the Carrier's payrolls shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine the amount due the claimants referred to in paragraphs (b) and (c).

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between The Delaware, Lackawanna and Western Railroad and its train dispatchers, represented by the American Train Dispatchers Association, effective August 1, 1937. A copy of this Agreement and subsequent revisions is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein.

For ready reference of the Board, the rules of said Agreement relevant to the instant claims as quoted as follows:

"ARTICLE 1

SCOPE

"(a) The term 'Train Dispatchers' as hereinafter used and as defined in Section (b) of this article shall be understood to include Assistant Chief Dispatchers, Trick Dispatchers, Relief Dispatchers and Extra Dispatchers.

"(b) Assistant Chief Train Dispatcher: This class shall include positions in which it is the duty of incumbents 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.

Trick Train Dispatcher; Relief Train Dispatcher; Extra Train Dispatcher: These classes shall include positions in which it is the duty of incumbents 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.

"(c) Where payroll classification does not conform to the foregoing sections, anyone performing service specified therein shall be reclassified in accordance therewith."

Prior to the date the instant dispute arose the train dispatching staff in Carrier's Buffalo, New York Office consisted of the following positions and incumbents:

POSITION	INCUMBENT
Chief Train Dispatcher	D. M. Lawson
Asst. Chief Train Dispatcher	J. B. Logan
Relief Chief, Asst. Chief T. Dispatcher	F. P. Wagner
First Trick Train Dispatcher	W. T. Ryan
Second Trick Train Dispatcher	J. T. Gilboy
Third Trick Train Dispatcher	A. A. McLaughlin
Relief Trick Train Dispatcher	J. D. Waterman, Jr.
Extra Train Dispatcher	E. J. Juswick

All data in support of the Carrier's position in this case have been handled on the property.

OPINION OF BOARD: Effective October 16, 1957 the Carrier combined its Buffalo and Scranton Divisions, thereby reducing the number of divisions on the railroad from three to two. The newly combined division, called the Scranton-Buffalo Division, is headquartered at Scranton, Pennsylvania. As a result of the consolidation, the excepted position of Chief Train Dispatcher and the positions of Assistant Chief Train Dispatcher and Relief Chief, Assistant Chief Train Dispatcher, were abolished at Buffalo. Concurrently, three new positions were established at Scranton with the title of Transportation Supervisor. The Buffalo office was placed under the jurisdiction of the Chief Dispatcher at Scranton.

Prior to the consolidation, the Dispatcher staff at Buffalo consisted of a Chief Dispatcher and Assistant Chief Train Dispatcher, a Relief Chief, Assistant Chief Train Dispatcher, three Trick Train Dispatchers and an Extra Dispatcher. As a result of the consolidation, the remaining positions in the Buffalo office were first, second and third Trick Train Dispatcher, one Relief Trick Train Dispatcher and one Extra Dispatcher.

The Employees concede the right of the Carrier to transfer the jurisdiction of the former Buffalo Division dispatching territory to the newly-created Scranton-Buffalo Division at Scranton, Pennsylvania, but claim that Article 1 of the Agreement — The Scope Rule — was violated because the Trick Train Dispatchers at Buffalo, after the consolidation, were required to perform supervisory duties which had been the responsibility of the Chief and Assistant Chief Train Dispatcher, and that such additional responsibility required a reclassification of such employees under Rule 1(c).

The Employees assert that immediately upon abolishment of the positions in question the Trick Train Dispatchers were left without supervision and had to assume responsibility for supervising their own train dispatching, the handling of trains, the distribution of power and equipment incident thereto and to perform related work — all which comes within the scope of Assistant Chief Train Dispatcher, as provided for in Article 1(b) of the Agreement. Further, they cite five specific bulletined instructions issued by management, which Employees contend involved responsibilities formerly exercised exclusively by the Chief and Assistant Chief Train Dispatchers. These instructions covered issuance of passes in the event of emergency; reports on crippled cars; enforcement of an agreement with respect to layoff by certain conductors; distribution of morning reports by registered mail; and, instructions for the handling of accident reports. Moreover, the Employees maintain they were required to assume other important duties and responsibilities coming within the scope of Assistant Chief Train Dispatchers such as arranging for detours and providing pilots over foreign roads in case of accident. In this connection, the Employees cite a specific derailment and detour where Trick Dispatchers acted without supervision from the Scranton office. Other duties not previously performed, included: contact with railroads with respect to interchange of traffic; contact with the shipping and travelling public with respect to train arrivals, departures and connections; contact with various division officers with respect to operations in general, all of which, the Employees maintain, are supervisory duties and responsibilities previously performed exclusively by the Chief

and Assistant Chief Train Dispatchers at Buffalo. The Employees insist that none of these additional duties were "related work" within the meaning of that term in Article 1 of the Agreement. They contend, accordingly, that since October 16, 1957 the positions of Trick Train Dispatchers have been a combination of Assistant Chief Train Dispatcher and Trick Train Dispatcher.

While it is permissible, the Employees contend, under the rules for an employee in a higher rated position, such as Chief Dispatcher, to perform some of the duties of a lower-rated position, such as Trick Dispatcher, it is not permissible under Article 1 (c) to apply the lower-rated classification to a position which includes the duties and responsibilities of a higher-rated position. Therefore, in the view of the Employees, the determination of this dispute turns squarely on the question of whether or not the claimants are performing the duties of Assistant Chief Train Dispatchers as defined in Article 1(b) of the Agreement.

The Carrier contends that the consolidation of the Buffalo and Scranton Divisions was accomplished in accordance with the Agreement; that the Employees have conceded as much; and, accordingly, that the Trick Train Dispatchers at Buffalo reported to and were supervised by the Assistant Chief and Chief Dispatchers at Scranton. The Carrier notes that the supervision and distribution of power was placed in the Scranton office where there is a round-the-clock dispatcher service and contends that the other work cited by the Employees is work historically performed by Trick Dispatchers, some of which was done under direct supervision at Buffalo before the consolidation. Further, the Carrier contends that work done by Trick Train Dispatchers at Buffalo after the consolidation is similar to work done at other stations on the railroad where supervision is at distant offices. All of the work, such as issuing emergency passes, preparing lists of crippled cars, or sending accident or morning reports is clerical and is work "related" to Trick Dispatchers' responsibilities. The Carrier classifies the Trick Train Dispatchers' responsibility in arranging for detours after derailment as "being more or less perfunctory and taking much less effort than it takes to issue a train order." Further, the Carrier maintains that Trick Train Dispatchers are authorized to arrange detours and do so at the direction of a supervisor. With respect to supervision from distant offices, the Carrier notes that Train Dispatchers at Bangor, Pennsylvania and Binghamton, New York, have performed their work for years under supervision from offices at Hoboken and/or Scranton. Since the scope rule is applicable to all dispatching offices on the property and the practice of supervision from a distant office is not new on this property, the Carrier concludes it is not in violation of the Agreement.

The principal issue in this dispute is whether the work of the supervisory Train Dispatchers actually disappeared at Buffalo after the consolidation.

There is no question about the authority of the Carrier to supervise the Train Dispatchers at Buffalo from the Scranton office. As at other places on the property, supervision may be exercised at one central point leaving Trick Train Dispatchers to perform the duties contractually and historically assigned to them. The Carrier's argument that such supervision was actually transferred from Buffalo to Scranton is not borne out of the facts, however. It is clear from the instructions given to

the Dispatchers in Buffalo by Carrier management, including the Division Superintendent, that some of the supervisory duties previously performed in the Buffalo office were transferred to the Trick Train Dispatchers in that office. Carrier does not deny that the work which the Employees complain about was not transferred to them. Carrier merely asserts that such work was historically performed by Trick Train Dispatchers and, therefore, was related to their work, as covered in the Scope Rule.

The pivotal question, therefore, is whether the additional work given to the Dispatchers at Buffalo was related to their work **as Dispatchers**, under the Agreement. The phrase "and to perform related work" in Article 1(b) of the Agreement applies to the primary responsibility of Trick Train Dispatchers, which under the Agreement is to move trains by train orders or otherwise. The term "related work" is inexact and can be given meaning only when considered in the light of practice on this property at the place and under the circumstances in which the work is performed. There seems to be no question that before the consolidation of the Buffalo and Scranton Divisions, Supervisory Dispatchers were responsible for and did perform work which the Employees allege (without contradiction by the Carrier) was transferred to them. Accordingly, the only meaningful practice available to determine if the additional work required of the Dispatchers is "related work" under the Agreement is to examine what supervisory personnel did before the consolidation. Since the practice was that supervisory personnel did this work, it follows that such additional work was not related to the responsibilities of Trick Train Dispatchers under the Agreement.

It was the Carrier's privilege to consolidate dispatching divisions and supervise Trick Train Dispatchers from a centrally-located office, but it was not the Carrier's privilege to realize the savings incident to such consolidation by distributing some of the remaining supervisory work among Employees retained as Trick Train Dispatchers. The abolishment of some positions at Buffalo and the demotion of the remaining Dispatchers should not be further aggravated by an increase in the amount and degree of responsibility for the remaining work, unless clearly supported by the Agreement. The definition of "related work" and the practice with respect thereto do not provide such support. Therefore, the basic claim of the Employees should be sustained.

Since Employees agree that the Carrier was authorized to consolidate as it did, it can be assumed that Employees also agree that jobs at Buffalo could be abolished. Given this predicate, there is no reason to make financially whole those Dispatchers at the lower end of the seniority roster who were adversely affected by the consolidation. Accordingly, the claim in item (c) should be denied.

As to those Dispatchers who assumed some supervisory responsibilities after the consolidation, only bizarre results would flow from a decision to reclassify all Trick Train Dispatcher positions at Buffalo as Assistant Chief Train Dispatchers, as requested by the Employees. Under such a situation—to adopt an old cliché—there would be all chiefs and no indians. Further, it is obvious that despite leaving behind some of the supervisory chores at Buffalo, the major responsibility for and general supervision of Dispatchers in Buffalo is assumed in the Scranton office. And besides, after the consolidation, such supervision was provided round the clock, rather than for 16 hours only, as before.

The violation to be corrected and compensated for is the assumption of some supervisory duties by Dispatchers in Buffalo. Even the Employees acknowledge that, at worst, the Buffalo Dispatchers were performing combined trick and supervisory responsibilities. For this, such Dispatchers should be paid at the higher rate in accordance with the intent of Article 1(c) of the Agreement. This compensation should be paid absolutely from the date of the consolidation to the date of the claim and conditionally thereafter, in view of the Employees' recognition of what is, in effect, a partial violation. If such violation continued after the date of claim filed with this Board and is not corrected pursuant to this opinion and order then Carrier should compensate the designated Dispatchers for so long as the violation continues.

Accordingly this Board believes that with respect to:

Item (a) — This claim should be sustained to the extent that the Carrier transferred a part of the duties and responsibilities of the Assistant Chief Train Dispatcher to the Trick Train Dispatchers at Buffalo in violation of the Agreement;

Item (b) — This claim should be sustained to the extent that the named Dispatchers, or their successors, shall be compensated for the difference in rate between Trick Train Dispatchers and Assistant Chief Train Dispatchers from October 16, 1957 through April 16, 1959, the date of the claim; and, thereafter for so long as the violation in Item (a) continues but only if, within 30 days of the date of this award, Carrier does not correct such violation.

Item (c) — Claim should be denied.

Item (d) — Claim should be sustained only to the extent the General Chairman of the American Train Dispatchers Association shall be authorized to verify the Carrier's computations on the difference between the rate-of-pay of Trick Train Dispatchers and Assistant Chief Train Dispatchers during the times in issue.

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 violated.

AWARD

Claim sustained and denied in accordance with the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1962.

**SPECIAL CONCURRING OPINION
AWARD 11013 — DOCKET TD 11260**

The record clearly supports the holding of the Majority that:

"It was the Carrier's privilege to consolidate dispatching divisions and supervise Trick Train Dispatchers from a centrally-located office, but it was not the Carrier's privilege to realize the savings incident to such consolidation by distributing some of the remaining supervisory work among Employees retained as Trick Train Dispatchers. The abolishment of some positions at Buffalo and the demotion of the remaining Dispatchers should not be further aggravated by an increase in the amount and degree of responsibility for the remaining work, unless clearly supported by the Agreement. The definition of 'related work' and the practice with respect thereto do not provide such support. Therefore, the basic claim of the Employees should be sustained." (Emphasis ours.)

And further:

"... Even the Employees acknowledge that, at worst, the Buffalo Dispatchers were performing combined trick and supervisory responsibilities. For this, such Dispatchers should be paid at the higher rate in accordance with the intent of Article 1(c) of the Agreement. This compensation should be paid absolutely from the date of the consolidation to the date of the claim and conditionally thereafter, in view of the Employees' recognition of what is, in effect, a **partial violation**. If such violation continued after the date of claim filed with this Board and is not corrected pursuant to this opinion and order then Carrier should compensate the designated Dispatchers for so long as the violation continues." (Emphasis ours.)

While it is true that only a portion of the work was imposed upon the individual Claimants, that fact makes it no less of a violation and the Majority correctly states in Findings, "That the Agreement was violated."

For the above reason the Labor Members voted for adoption of Award 11013. However, I find myself in disagreement with the theory of "partial violation" injected by the Referee. The Carrier advanced no such theory. To the contrary Carrier simply alleged that there was no violation of the agreement which position has not, nor could it be, sustained on the basis of the confronting record.

Thus in the light of the fact that the Carrier did not contend that it was only a partial violation, we have an award that disposes of a portion of the dispute on a question which was not in dispute between the parties. Further, the Carrier is partially relieved, at least conditionally, of its obligation to make reparations for what the Findings herein expressly hold to have been a violation of the Agreement.

As it was so aptly stated by Referee Shake in our Award 2611:

"... It was as much the duty of the Carrier to conform to the Current Agreement as it was that of the Employee and his

Organization to protest violation thereof and it would be inequitable to permit the Carrier to reap a benefit from its own wrong."

For the reasons indicated above, I find myself in earnest disagreement to that portion of the Award which conditionally awards reparations after April 16, 1959, because of the alleged partial violation of the Agreement.

**H. C. Kohler, Labor Member
Third Division, NRAB**

**DISSENT TO AWARD NO. 11013,
DOCKET NO. TD-11260**

The error in this Award is obvious. The mere fact that certain duties have been performed on a higher rated job does not carry with it the never varying conclusion that anyone who performs such duties thereby performs higher rated work. Many jobs are made up of so-called higher and lower rated duties and the assistant chief job at Buffalo was no exception. The record showed without contradiction that the very duties in issue have been and are performed elsewhere on Carrier's property by trick train dispatchers and it has never been contended that in performing those duties trick train dispatchers are doing anything other than that which is properly assignable to their jobs. The effect of this Award is that these duties at Buffalo constitute so-called higher rated work while elsewhere on Carrier's property the same duties are properly assignable to and performed by trick train dispatchers. The Majority thus relegated the Agreement to a point Agreement for purposes of this case only. This is indefensible as the Agreement contains no such dual standard. Rather, and plainly so, it is system-wide in scope and application (Awards 10014 and 10615) and should have been so applied in the instant case.

For these reasons the Award is erroneous and we dissent.

R. A. Carroll

P. C. Carter

W. H. Castle

D. S. Dugan

T. F. Strunck

**ANSWER TO CARRIER MEMBERS' DISSENT TO
AWARD NO. 11013, DOCKET TD-11260**

The dissenters are entirely correct when they state:

"Many jobs are made up of so-called higher and lower rated duties and the Assistant Chief job at Buffalo was no exception."

By this very statement they admit that the job at Buffalo was an assistant chief job. They fail, however, to give consideration to Article 1(a) and (b) of the confronting Agreement which sections define the duties of (a) trick train dispatchers and (b) chief and assistant chief dispatchers, and section (c) which provides that:

"Where payroll classification does not conform to the foregoing sections, anyone performing service specified therein **shall be reclassified in accordance therewith.**" (Emphasis ours.)

We cannot presume that the parties herein intended to do a useless act and make a meaningless rule. Article 1(c) supra is clear and unambiguous and in the light of the facts of record Claimants were entitled to be reclassified as prescribed in the Rule.

Award 11013 correctly interprets the Agreement between the parties in holding that the Agreement was violated.

**H. C. Kohler, Labor Member
Third Division, NRAB**