Award No. 11285

Docket No. TD-12487

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" violated the Scope and Definitions of Part II of the Agreement between the parties, effective July 1, 1950, when on and after November 1, 1958 the Carrier permitted and required duties of Movement Directors to be performed by employes and/or supervisory officers not within the Scope of the Agreement.

(b) That Carrier shall now compensate the senior available extra Movement Director for each day and for each trick, in the amount of the difference between what he was paid and the amount he would have been paid as Movement Director; said extra Movement Director being identified in the Statement of Facts in this submission; or

(c) In the event any of the said extra Movement Directors performed no compensated service on any day during the period here in question, the Carrier shall be required to compensate said claimant or claimants one day's pay at pro rata rate of Movement Director; or

(d) Compensate the senior available assigned Movement Director, identified in the Statement of Facts in this submission, at time and one half rate on their respective assigned rest days during the period here involved.

EMPLOYES' STATEMENT OF FACTS: An Agreement on rules governing compensation, hours of service and working conditions, dated July 1, 1950, between the parties to this dispute, and applicable to the claims identified herein, was in effect at the time this dispute arose. A copy of that Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein.

The Scope and Definitions (Page 15) of Part II of the Agreement which are material here provide:

CONCLUSION

The Carrier has shown that Yard Masters or other supervision are not performing Movement Directors' work; that no provisions of the Rules Agreement were violated; and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claims are progressed here on behalf of Movement Directors and extra Movement Directors, as a result of Carrier's action on October 31, 1958, at which time it abolished three positions of three Belt Line Crews, operating under the direct supervision of Movement Directors, and employes covered by the Train Dispatchers Agreement, and as alleged, constituted a violation of said agreement, when it established three yard belt crews, all in the Grays Ferry District. Such employes it is contended, as coming under supervision of employes of the Yardmasters craft, not covered by the Train Dispatchers Agreement. That as a result of such action by Carrier, the employes involved here were deprived of work performed by employes outside the Train Dispatchers craft.

Carrier contends that the provisions of Scope Rule Part II, of the Agreement, are applicable here, and whether or not Carrier has, by its action here, taken work from the Movement Directors, and given it to employes of another craft.

We can find no express rule in the Agreement, which specifies certain work is reserved to Movement Directors. We can find no provision in the Scope Rule or other provisions, which prohibits Carrier from making changes in the number and use of crews, as appears in the record before us. There is no proof here that the employes here have an exclusive right to the work, required here either by past custom or practice or by provision of the Scope Rule, relied on by the Organization. There is no evidence here before us that the work of Movement Directors, was affected in any manner by changes made by Carrier.

The record before us is not sufficient to support a sustaining award.

FINDINGS: The Third Division of the Adjustment Board, 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 did not violate the Agreement.

AWARD

Claim denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April 1963.

LABOR MEMBER'S DISSENT TO AWARD 11285 DOCKET TD-12487

Award 11285 erroneously holds that:

> "The record before us is not sufficient to support a sustaining award.",

despite the presence in the record of Carrier's notice, dated May 6, 1960, to the effect that Belt Line Crews (Runner crews) would replace the 317 Yard Belt Crews and perform the service which they always previously performed prior to November 1, 1958, the initial date of the violation.

Also in the record and jointly agreed to by the Carrier and the Organization we find that:

> ". . . Such movements previously were normally made by Belt Line Crews (Runners) by direction of and under the supervision of Movement Directors."

The majority incorrectly, unjustly and erroneously followed a self-serving and uncorroborated statement of the Carrier that:

> "It is well established by numerous awards of this Board that scope rules of this type which merely list classifications do not have the effect of exclusively reserving any particular work to such classifications." (Emphasis ours.)

Carrier's own quoted excerpts from Awards 4827 and 6032 admit that past practice governs the work which is to be included within the terms of the agreement.

Either a Scope Rule, general in nature, does or does not cover work which has previously been performed through years of past practice by a certain craft of employes. If such general Scope Rule does not cover work of this nature and Carrier is permitted to have absolute right to add to, take away or eliminate and transfer work from one craft to another arbitrarily and unilaterally then the effectiveness of the general Scope Rule is completely nullified.

The record discloses that the handling and supervision of the movement of cars between yards in the Philadelphia District has always been the responsibility of Movement Directors and this has never been denied by the Carrier.

Carrier never issued instructions that the disputant Yard Belt crews in operation between November 1, 1938 and May 6, 1960 would be at the disposal of Movement Directors for inter-yard movement, nor were Movement Directors ever previously instructed that they had access to any Yard Belt crews for the movement of cars inter-yard at their direction.

The record clearly establishes that the work here in question is within the Scope Rule, and it being admitted that the work was removed and assigned to employes and/or supervisors not within the coverage of the Agreement, a sustaining award should have been rendered.

For these and other reasons, Award 11285 is incorrect and dissent thereto is hereby registered.

R. H. Hack