

Award No. 13649
Docket No. TD-14806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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 and continues to violate, the effective schedule agreement between the parties, Part 1, Scope, thereof in particular, when on and after January 29, 1963, it required and permitted employes not within the scope of the schedule agreement to perform work covered thereby.

(b) The Carrier shall now be required to terminate the delegation of work referred to in paragraph (a) hereof and restore the same to employes within the scope of the said schedule agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board, and the same is incorporated herein the same as though fully set out.

The Scope Rule of Part I of the Agreement, applicable to train dispatchers, is here quoted for ready reference:

"The provisions set forth in Part I of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company and its Train Dispatchers, represented by the American Train Dispatchers Association, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes classified herein.

The term "Train Dispatchers" as used in Part I of this Agreement shall include trick, relief and extra Train Dispatchers.

When remote control or traffic control machines are operated by employes other than Train Dispatchers, a Train Dispatcher at the dispatching headquarters shall exercise direct supervision over the employes operating such machines.

OPINION OF BOARD: After reviewing the entire record we find that the following facts were either or both admitted and proven.

Prior to the issuance of General Order 727 the primary responsibility for the direction of train movements on the track designated in General Order 727 was that of the Train Dispatchers. The track was changed from its previous status to secondary track. The movement of trains on secondary tracks does not belong exclusively to Train Dispatchers.

In Award No. 11239 (Moore) this Board considered a claim filed on behalf of the American Train Dispatchers Association against The Pennsylvania Railroad Company based upon the Scope Rule of their agreement and where the track had been reclassified.

In that award this Board said:

"We must first determine, if by agreement, the Carrier has precluded itself from the right to reclassify portions of its track. We are unable to discern any clause in the Agreement which limits the rights of the Carrier in this respect. We do believe that the reclassification must be reasonably justified and made in good faith. The good faith of the Carrier or the reasonableness of the reclassification of track is not challenged or contested in the record.

After the reclassification of track, the work is certainly of a different character. It no longer is work which is customarily performed by Train Dispatchers. We must now determine if by custom and practice on the system, the work belongs to Train Dispatchers. The Scope Rule is general in character. Therefore, we must rely upon the custom and practice upon the system. The burden of proof is upon the Petitioner. We find no evidence in support thereof."

We therefore have before us now, the same parties, the same agreement, the same rule of that agreement, and the same type of alleged violation.

Of the Dockets that come before this Board there are at least three types in which the previous awards play a predominant role.

First, there are those dockets in which the Claimant refiles a claim previously litigated. In this even the doctrine of res judicata applies and is a bar to the refiled claim.

The second is where a claim is filed involving the same parties as a previous claim and some or all of the same issues but a different cause of action. Estoppel by judgment applies to this type of action and precludes parties from contending to the contrary on any point or matter of fact, which has once been put in issue by them or those to whom they are privy and as an ultimate fact or conclusion of law has been found against them.

The third relates to claims filed involving strangers to a previous award which adjudicates the issues involved in the docket being considered. The principle to be applied in these cases is stare decisis.

Non jurisdictional error of a previous award can only be of consideration in the third class of dockets. This Board has no jurisdiction to try the same issue of fact or law between the same parties twice.

The principles set out herein are not only the law in the nations which derive their jurisprudence from England, but are also the law throughout the entire world. The principles are elementary, for indeed if *res judicata*, estoppel by judgment and *stare decisis* are not the law there is no law, there is no substance to justice, there is only procedure and argument. See the text books on Judgments, the Judgment sections of American Jurisprudence and *Corpus Juris Secundum*.

This docket is clearly one of those in which estoppel by judgment is applicable and in this particular docket no issues of fact or conclusions of law different from Award 11239 (Moore) are presented. Accordingly, this docket will be dismissed as no issues are presented herein which have not been previously adjudicated. See Award 4788 (Robertson); and 6935 (Coffey).

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1965.

LABOR MEMBER'S DISSENT TO AWARD 13649, DOCKET TD-14806

The majority grievously erred in adjudicating this dispute by failing to properly construe the record here before it; by accepting as fact certain proven and unsupported allegations of the Carrier which had been denied by the Organization; and by reliance for precedent upon Award 11239, which had likewise been resolved incorrectly as pointed out in the dissent thereto.

No useful purpose would be served by pointing out wherein the record clearly supports the Organization rather than the Carrier for even a casual reading of the record makes this obvious.

Award 13649 improperly dismisses the claim and being erroneous, as was Award 11239, the employees submit it is wholly without value as precedent. For the foregoing and other reasons dissent is registered to this Award.

R. H. Hack
Labor Member

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD 13649, DOCKET TD-14806
(Referee Hutchins)**

The Carrier Members' answer to Labor Member's Dissent to Award 11239 is incorporated herein as our answer in this case also.

**W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts**