

Award No. 19149

Docket No. TD-18861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC TRANSPORTATION COMPANY -
TEXAS & LOUISIANA LINES

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

(a) The Southern Pacific Company—Texas and Louisiana Lines —(hereinafter "the Carrier") violated the effective agreement between the parties, Rule 2(b) thereof in particular, when effective July 1, 1969 it required and/or permitted employes not covered by said agreement, to perform work within the scope of the effective Agreement.

(b) Carrier shall now compensate the train dispatcher indicated one day's compensation at the time and one-half rate applicable to Chief Dispatcher on dates accompanying names as all were observing rest days and available.

July 8, 1969 — W. R. Whittington
July 9, 1969 — H. L. Roger
July 10, 1969 — T. E. Scates
July 11, 1969 — E. E. Manosky
July 12, 1969 — T. E. Malcolm
July 13, 1969 — P. Cain
July 14, 1969 — E. J. Moltz
July 15, 1969 — W. R. Whittington
July 16, 1969 — E. L. Hord
July 17, 1969 — B. L. Baldwin
July 18, 1969 — V. W. Keller
July 19, 1969 — J. M. Howell
July 20, 1969 — P. Cain
July 21, 1969 — L. H. Price
July 22, 1969 — P. Collins
July 23, 1969 — Clyde Frost
July 24, 1969 — Clyde Frost
July 25, 1969 — R. E. Earle
July 26, 1969 — E. Holtsclaw

July 27, 1969 — J. W. Barker
 July 28, 1969 — A. E. Murray
 July 29, 1969 — V. F. Kapczynski
 July 30, 1969 — W. L. Standridge
 July 31, 1969 — B. L. Baldwin
 August 1, 1969 — P. H. Lessig
 August 2, 1969 — J. D. Hicks
 August 3, 1969 — P. Cain
 August 4, 1969 — J. R. Jones
 August 5, 1969 — W. V. McKinzie
 August 6, 1969 — P. H. Lessig
 August 7, 1969 — V. W. Keller
 August 8, 1969 — C. Stewart
 August 9, 1969 — E. J. Moltz
 August 10, 1969 — J. D. Hicks
 August 11, 1969 — L. H. Price
 August 12, 1969 — V. F. Kapczynski
 August 13, 1969 — C. K. Oden
 August 14, 1969 — H. B. Swanzy
 August 15, 1969 — G. Henderson
 August 16, 1969 — E. E. Manofsky
 August 17, 1969 — A. E. Murray
 August 18, 1969 — J. W. Barker
 August 19, 1969 — W. E. Howell
 August 20, 1969 — C. Stewart
 August 21, 1969 — Carl Frost
 August 22, 1969 — J. R. Jones
 August 23, 1969 — E. Holtsclaw
 August 24, 1969 — Pat Cain
 August 25, 1969 — J. W. Barker
 August 26, 1969 — P. Collins
 August 27, 1969 — R. E. Bailey
 August 28, 1969 — B. L. Baldwin
 August 29, 1969 — T. E. Stojanik
 August 30, 1969 — E. E. Manofsky
 August 31, 1969 — H. L. Roger

(c) Because of said violation, the Carrier shall, effective September 1, 1969 and each date thereafter until said violation ceases, compensate the senior available extra train dispatcher one day's compensation at the pro rata rate applicable to Chief Dispatcher.

(d) In the event no extra train dispatcher was available Carrier shall compensate the senior available train dispatcher observing rest days, one day's compensation at the time and one-half rate applicable to chief dispatcher for said violation.

(e) The individual claimant entitled to compensation effective September 1, 1969 shall be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, last revised May 1, 1967, a copy of which is on file with this Board and the same is incorporated into this Ex Parte Submission as though fully set out herein.

Rule 2 defines the work and the positions of those covered by the Agreement and for the Board's ready reference, said rule, Scope, of the Agreement is here quoted in full text:

"RULE 2.

(a) Trick Train Dispatchers. This class includes positions in which the duties of incumbents are 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.

(b) Chief Dispatchers' and Assistant Chief Dispatchers' Positions. 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."

Performance records of trains are considered to be necessary as they reflect the efficiency of operation. Each Division Superintendent required the Chief Dispatched to be knowledgeable of the performance of trains on his assigned district or territory during the time he was on duty. The Night Chief Dispatcher was required to make a record of the performance of trains for the preceding calendar day. He was also required to reduce this record to a report in the proper form and have it completed by 6:00 A. M. the following day.

Said "6:00 A. M. SITUATION REPORT" was addressed to General Officers as well as Division Officers and contained such information as train identification, horsepower of locomotive units (previously steam engine numbers), loads, empties and tonnage of trains. It also included the amount of time in excess of time scheduled for movement of a train over a Division and cause of excess time (delays).

With the consolidation of all train dispatching offices on the T&L Lines during 1959 into one office at Houston, Texas, territories and districts of Chief Dispatchers were consolidated. The consolidation of districts and territories necessarily brought about a consolidation of records and reports. The 6:00 A. M. Situation Reports were consolidated into four (4) and are commonly known as:

6:00 A. M. SAN ANTONIO SITUATION REPORT
6:00 A. M. VICTORIA SITUATION REPORT
6:00 A. M. HEWT SITUATION REPORT
6:00 A. M. DALSA SITUATION REPORT

duties which should be assigned the incumbents and the responsibilities of the Chief Dispatchers thereafter.

On September 5, 1969, the Office Chairman of the American Train Dispatchers Association presented, by letter to the Superintendent of Transportation, a claim on behalf of certain train dispatchers for each date between July 5, 1969 and August 31, 1969, for payment of a day's pay at time and one-half at Chief Dispatcher's rate, based on the contention that the named employees who performed no service, but who were on rest days on the dates for which named, should have been used as an additional Chief Dispatcher to have performed the work of making the report of operations (commonly called 6:00 A.M. situation report) for the three segments of the territory where clerks now had been assigned to assist the Chief Dispatchers.

The claim was declined. It was appealed October 25, 1969, by the General Chairman, ATDA, to Carrier's Manager of Labor Relations, highest officer on the property designated for such handling. On November 12, 1969, the Manager of Labor Relations declined the claim. Claim was discussed in conference December 8, 1969, without settlement. When the General Chairman indicated that the claim would be handled further on appeal, his attention was directed to the fact that his contention raised a jurisdictional dispute and that the Brotherhood of Railroad, Airline and Steamship Clerks, Freight Handlers, Station and Express Employees, was a third party in interest in the case. **CARRIER'S EXHIBIT NO. 1** reproduces the correspondence referred to above.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective July 1, 1969 Carrier established the position of "additional third trick Clerk-Typist". The purpose of that position, referred to in the record as Position No. 58, is set forth in the memorandum of June 27, 1969, from the Superintendent of Transportation instructing the Chief Dispatchers as to the duties of the position. The relevant parts of the memorandum follow:

"Effective July 1, additional assignment in the steno office will be made which will provide two Clerks-Typists on first trick 7 days per week, one on second trick 7 days per week and two on third trick 7 days per week with appropriate relief.

The purpose of the additional third Clerk-Typist is to assist in preparing morning reports as well as assist in removing consists from highspeed printer and as soon as the jobs are filled, I want the third trick Chief to teach the third trick Clerk-Typist the proper manner in which the morning reports are to be prepared and will expect the Clerk-Typist to assemble, type and submit to the Chief Dispatcher for his approval the morning reports.

Third trick Chief will check the reports for accuracy and will police the delays that are shown on the morning reports and will be held responsible for the proper preparation and accuracy of the reports, I do not expect the third trick Chief to do his own typing of the reports.

This should sufficiently relieve the third trick Chief Dispatcher so that he can properly supervise the Train Dispatchers and the over-

all operation of his particular territory and he will be expected to assume his responsibility of proper supervision.

If there are any questions as to what will be expected of the third trick Chief, please discuss these with me.

In regard * * *."

The duties of Position No. 58 are referred to, by Petitioner, variously throughout the record. At some places they are referred to as "to assist in preparing morning reports, etc.", or "to prepare division reports" or "being permitted and/or required to perform the duties of compiling * * * reports." No matter how the duties are described, Petitioner contends that the performance of the duties by the incumbent of Position No. 58, specifically with respect to the 6:00 A.M. Situation Report, constituted the transfer of work from the Chief Dispatcher in violation of the agreement. Petitioner relies on Rule 2(b) of the agreement generally and in particular upon the phrase "and to perform related work."

We shall find that the duties of Position No. 58 are those set out in the memorandum of June 27, 1969, as there is no evidence to the contrary.

Thus, it is clear from the record that the work performed by the Clerk, on the 6:00 A.M. Situation Report is done under the supervision of the Chief Dispatcher to whom the report must be submitted for checking before being released. The record is devoid of any evidence tending to show that the work done by Position No. 58 detracts, in any way, from the Chief Dispatcher's primary function, the responsibility for the movement of trains or his other supervisory functions. In this connection it is also clear that the primary function of the Chief Dispatcher is clearly spelled out in Rule 2(b). However, as clear as the primary responsibility is the phrase "and to perform related work.", is not so clear.

That phrase, of course, does not specifically reserve the work in issue to Chief Dispatchers under Rule 2(b). Carrier contends the phrase is "vague and indefinite". Petitioner says it is not. To the extent that the phrase is capable of being understood in two or more ways it is ambiguous or equivocal. The phrase may be understood as allowing latitude in assignments rather than in a restrictive sense. In any case, it is not a phrase on which we can base a finding that the work has been exclusively reserved for Chief Dispatchers. Award 14385, 13329. Therefore, the claim is denied.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.