

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19908
Docket Number TD-19846

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines), hereinafter referred to as "the Carrier" violated the Agreement in effect between the parties, Rule 2 (b) thereof in particular, when on July 12, 21, 23, August 9 and 10, 1971 it required and/or permitted an officer, supervisory employees and others not within the scope of said Agreement to perform work covered thereby.

(b) The Carrier shall now compensate Train Dispatchers R. B. Starr, C. Stewart, T. E. Malcolm, L. H. Price and P. Cain respectively one day's compensation at one and one-half times the daily rate of Chief Dispatcher for said violations.

(c) The individual Claimants identified in paragraph (b) were observing rest days on the corresponding dates identified in paragraph (a) and were available for service.

(d) Violations and Claimants referred to in paragraphs (a) and (b) above on specific dates are as follows:

(1) R. B. Starr, July 12, 1971 - Supervisory Agent H. P. Girouard instructed the crew of Train No. 58 as follows from Crowley. "Pickup in House Track Scott SP 128731 mty box and take to Lafayette Yard."

(2) C. Stewart, July 21, 1971 - Supervisory Agent E. F. Bavary, Crowley, Louisiana instructed the crew of Train No. 58 at Midland, Louisiana as follows: "Pick up at Estherwood siding SP 172005 mty B4 for Lafayette Yard."

(3) T. E. Malcolm, July 23, 1971 - Superintendent E. F. Winterrowd, Lafayette, Louisiana issued the following instructions to the crew of Train No. 58 at Crowley. "Pick up at Rayne CN 530152, CP 140581 and CP 221780 and take to Lafayette Yard. And also SOU 9102 all mty boxes."

(4) L. H. Price, August 9, 1971 - Superintendent E. F. Winterrowd, Lafayette, Louisiana issued the following instructions to the crew of Train No. 58 at Crowley. "Pick-up at Scott PRR 377651, PC 576565, SSW 70732, CG-1833, SP 515409, CO 460399, SA 916 and CO 26977."

(5) P. Cain, August 10, 1971 - Supervisory Agent A. J. Manofsky, Beaumont, Texas issued the following instructions to the crew of Train No. 68 at Dayton. "Pick up mty at Jefferson Feed Co. at Amelia Texas RI 21883."

OPINION OF BOARD: The work in dispute here involves the issuance of instructions to train crews to pick up cars at intermediate points along the train's movement route. The Dispatchers concede that past practice has been for such work to be performed by non-Dispatchers, but they assert that the work is reserved exclusively to them by Rule 2 of the Agreement and that, therefore, the instructions to train crews must originate directly or by authority of the Dispatchers. Rule 2, in pertinent part, reads as follows:

"RULE 2

* * * * *

(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." (Emphasis added)

Petitioner is aware of authorities from Public Law Board 588 and Third Division Awards, too numerous for citation, which have ruled adversely to its position. Petitioner contends, though, that these authorities are in error in that the above underlined text clearly and unambiguously covers work instructions to pick up cars. In studying the voluminous material and great number of Awards submitted by Petitioner, we have assumed that Rule 2 (b) is a specific scope rule rather than a general one. Thus, we have taken the most favorable view possible of Petitioner's case. However, from our overall study of this dispute, including careful scrutiny of the prior authorities, we are not persuaded to Petitioner's viewpoint.

The decisions of Public Law Board 588 concerned agreement language which is essentially the same as the language in this dispute. (The language in this dispute is contained in Rules 1 and 2 of the Agreement, while it was in a single rule in the Public Law Board 588 cases.) In Award Nos. 5, 42, and 60 of Public Law Board 588, (Dolnick), there was an express determination that wo...

instructions to pick up and set out cars did not constitute distribution of equipment incident to the supervision of handling of the train as contemplated by the language of the Scope Rule. (Emphasis ours) (Though not as fully spelled out, Award No. 4, P. L. Board 588, ruled to like effect.) This same determination has been made in Third Division Award Nos. 18591, 18689, 18690, 18938, 19088, 19093, and 19094 (All Dolnick). It is our view that, as a matter of language interpretation, the foregoing Public Law Board and Third Division Awards concluded that work instructions to pick up cars ~~were~~ not covered by the language now before us. And while we observe that the conclusion of these prior awards is not self-evidently the only conclusion that could have been reached, we believe the same statement could be made if a contrary conclusion had resulted. Thus, while the decision of these prior Awards is one on which reasonable minds could disagree, we do not believe those Awards are so palpably erroneous as to render them of no precedential value. Consequently, while we have viewed Petitioner's case in its most favorable light, we are nonetheless constrained to conclude that the work of issuing instructions to pick up cars is not distribution of equipment incident to the supervision of handling the train as provided in Rule 2 (b). For a similar result, also see Award 19794 (Dorsey).

We shall deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

LABOR MEMBER'S DISSENT TO AWARD NO. 19908, DOCKET TD-19846
REFEREE BLACKWELL

Award No. 19908 states:

" *** It is our view that, as a matter of language interpretation, the foregoing Public Law Board and Third Division Awards concluded that work instructions to pick up cars were not covered by the language now before us. And while we observe that the conclusion of these prior awards is not self-evidently the only conclusion that could have been reached, we believe the same statement could be made if a contrary conclusion had resulted. Thus, while the decision of these prior Awards is one on which reasonable minds could disagree, we do not believe those Awards are so palpably erroneous as to render them of no precedential value. *** "

The foregoing Public Law Board Awards and Third Division Awards mentioned were all decisions where Referee Dolnick was the neutral. Tracing the rulings in these Dolnick Awards, in the order of their rendition, starting with Award No. 1 of Public Law Board No. 588 dated December 22, 1970 you find it is not a matter of language interpretation but a matter of interpreting the wrong language. The earliest Dolnick Awards clearly show the Referee was of the opinion there had to be a train order or "tantamount to" to justify a sustaining decision. The portion of the scope rule in question in the Dolnick Awards; i.e. Chief, Night Chief and Assistant Chief Dispatcher position duties makes no mention of train orders, but that portion of the scope rule concerning trick train dispatcher duties contains the phrase "the movement of trains by train orders . . . ". The initial decisions by Referee Dolnick were based on interpretation of the wrong portion of the rule as the Awards clearly show.

This erroneous initial determination has been reflected and compounded until, as Award No. 19908 states:

" *** ..., there was an express determination that work instructions to pick up and set out cars did not constitute distribution of equipment incident to the supervision of handling of the train as contemplated by the language of the Scope Rule. *** "

However, an express determination based on erroneous determination should not be followed. As Award No. 10063 states:

" *** ..., it must be noted that precedent is not gospel--and relying entirely on precedent can result in compounding mistakes and perpetuating error."

Award No. 19908 follows the Dolnick Awards without a complete endorsement of the conclusion reached therein in stating:

" *** And while we observe that the conclusion of these prior awards is not self-evidently the only conclusion that could have been reached, we believe the same statement could be made if a contrary conclusion had resulted. Thus, while the decision of these prior Awards is one on which reasonable minds could disagree, we do not believe those Awards are so palpably erroneous as to render them of no precedential value. Consequently, while we have viewed Petitioner's case in its most favorable light, we are nonetheless constrained to conclude that the work of issuing instructions to pick up cars is not distribution of equipment incident to the supervision of handling the train as provided in Rule 2 (b). *** "

Prior to the Awards of Public Law Board No. 588 and the Third Division Awards cited in Award No. 19908, the Third Division has ruled on supervising the handling of trains and the distribution of power and equipment incident thereto holding:

Award No. 1015:

"The very title has significance in the premises. Movement Directors of what? Traffic and trains. Directors of movements of trains, distribution of cars, handling of power and so forth. It would seem that the chief, if not the only, differences between Movement Directors and Assistant Dispatchers is in the title and the amount of pay."

Award No. 1828:

"Article 1 (a, b & c), are as follows:

'(a) The term 'Train Dispatchers' as herein used shall include all Train Dispatchers, excepting only one Chief Train Dispatcher in each dispatching office.'

'(b) Definition of Chief, Night Chief 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.'

'(c) Definition of Trick Train Dispatchers' positions.'

'This class shall include 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.'

A comparison of Article 1 (b) and (c) discloses that the duties of chief, night chief and assistant chief dispatchers are not the same as those of trick dispatchers. In other words, the former are empowered to perform duties in addition to those entrusted to the latter in the following particulars: They are responsible for the movement of trains on a division or other assigned territory, whereas the trick dispatchers are responsible for movement of trains by train order, or otherwise. While the two overlap, yet the function of the Night Chief Dispatcher exceeds materially that of the Trick Dispatcher. The former has the duty to supervise the handling of trains and the distribution of power and equipment incident thereto. None of these duties attach to the latter."

Award No. 14219:

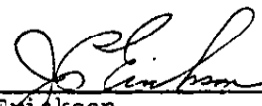
"It is clear that train dispatching work, including the task of supervising 'the handling of trains and the distribution of power and equipment incident thereto,' belongs to Dispatchers. Included among Dispatchers' duties are the issuance of orders for the movement (distribution) of trains and cars. ***"

The above cited Awards, i.e. 1015, 1828, 14219 along with Awards 14911, 14385 and all of Referee Dolnick's Awards on this subject, both Public Law Board No. 588 and Third Division, were presented for consideration during adjudication of Docket TD-19846, Award No. 19908.

With the self-evident conflict in Awards on the same subject, it becomes apparent an in-depth study should have been made to resolve the issue and/or conflict. This is exactly what the Employees asked for in Docket TD-19846 stipulating their endorsement of the principle that the Board is not empowered nor expected to change the terms of an agreement. Award No. 19908 fails to mention Awards 1015, 1828 and 14219 holding counter to the Dolnick Awards and also fails to comment or consider the conflict within the Dolnick Awards themselves.

In closing, Award No. 19908 states "For a similar result, also see Award 19794 (Dorsey)." About the only similarity is the final decision "claim denied". Award No. 19794 based its denial on an erroneous exclusive right burden of proof. As was clearly pointed out in the Dissent to Award No. 19794, a clear unambiguous rule reserves the work in question and "exclusive right" is not apropos. Award No. 19908 blindly follows prior awards containing admittedly questionable conclusions and ignores other awards making clear statements regarding supervising the handling of trains and the distribution of power and equipment incident there

Award No. 19908 fails to consider and/or interpret the rule prescribing the duty "to supervise the handling of trains and the distribution of power and equipment incident thereto". Therefore, Award No. 19908 is in error and I must dissent.



J. P. Erickson

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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Docket Number TD-19846

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines), hereinafter referred to as "the Carrier" violated the Agreement in effect between the parties, Rule 2 (b) thereof in particular, when on July 12, 21, 23, August 9 and 10, 1971 it required and/or permitted an officer, supervisory employes and others not within the scope of said Agreement to perform work covered thereby.

(b) The Carrier shall now compensate Train Dispatchers R. B. Starr, C. Stewart, T. E. Malcolm, L. H. Price and P. Cain respectively one day's compensation at one and one-half times the daily rate of Chief Dispatcher for said violations.

(c) The individual Claimants identified in paragraph (b) were observing rest days on the corresponding dates identified in paragraph (a) and were available for service.

(d) Violations and Claimants referred to in paragraphs (a) and (b) above on specific dates are as follows:

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OPINION OF BOARD: The work in dispute here involves the issuance of instructions to train crews to pick up cars at intermediate points along the train's movement route. The Dispatchers concede that past practice has been for such work to be performed by non-Dispatchers, but they assert that the work is reserved exclusively to them by Rule 2 of the Agreement and that, therefore, the instructions to train crews must originate directly or by authority of the Dispatchers. Rule 2, in pertinent part, reads as follows:

"RULE 2

* * * * *

(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." (Emphasis added)

Petitioner is aware of authorities from Public Law Board 588 and Third Division Awards, too numerous for citation, which have ruled adversely to its position. Petitioner contends, though, that these authorities are in error in that the above underlined text clearly and unambiguously covers work instructions to pick up cars. In studying the voluminous material and great number of Awards submitted by Petitioner, we have assumed that Rule 2 (b) is a specific scope rule rather than a general one. Thus, we have taken the most favorable view possible of Petitioner's case. However, from our overall study of this dispute, including careful scrutiny of the prior authorities, we are not persuaded to Petitioner's viewpoint.

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We shall deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

LABOR MEMBER'S DISSENT TO AWARD NO. 19908, DOCKET TD-19846
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Award No. 1015:

"The very title has significance in the premises. Movement Directors of what? Traffic and trains. Directors of movements of trains, distribution of cars, handling of power and so forth. It would seem that the chief, if not the only, differences between Movement Directors and Assistant Dispatchers is in the title and the amount of pay."

Award No. 1828:

"Article 1 (a, b & c), are as follows:

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'(b) Definition of Chief, Night Chief and Assistant Chief Dispatchers' Positions.'

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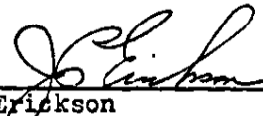
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Award No. 19908 fails to consider and/or interpret the rule prescribing the duty "to supervise the handling of trains and the distribution of power an equipment incident thereto". Therefore, Award No. 19908 is in error and I must dissent.



J. P. Erickson