

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24491
Docket Number TD-24440

Robert Silagi, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Consolidated Rail Corporation

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

(a) The Consolidated Rail Corporation (hereinafter referred to as the "Carrier") violated the effective agreement between the parties Rule 1 Scope, when it abolished the positions of Assistant Chief Dispatchers PRSL district and removed work specified in Rule 1 from such employees at the location which such work was performed by Agreement, past practice and history.

(b) For the above violation the Carrier shall compensate claimants (M. Jones, T. Dunn, B. Scamoffa and W. Wexler) one day's compensation at the pro rata rate applicable for Assistant Chief Dispatcher for each day this violation remains in effect.

OPINION OF BOARD: This dispute involves the interpretation of the Scope Rule, Rule 1(b)1. Chief Dispatchers, Assistant Chief Dispatchers.

"Chief Train Dispatcher: Assistant Chief Train Dispatcher: these classes 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.

NOTE:

The foregoing shall not operate to restrict the performance of work as between the respective classes herein defined, but the duties of these classes may not be performed by officers or other employees. The compensation of employees performing the work of two or more of the classes herein defined shall be that of the highest rated class of work which they perform."

The issue herein is whether employes outside the craft performed duties reserved to Train Dispatchers. The facts which led to the dispute follow.

The four named Claimants held positions of "Assistant Movement Directors" Seashore District, headquartered in Philadelphia. On September 1, 1979, the effective date of the Schedule Agreement, Claimants' title was changed to "Assistant Train Dispatcher" to conform to the job title contained in the Agreement. Apparently there was no change in their duties. Pursuant to a plan to restructure

various divisions of the railroad, on September 14, 1979, Carrier notified the incumbent Dispatchers that as of October 1, 1979, they were to absorb the work of the former Assistant Movement Directors. On October 1, 1979, the Carrier abolished the positions of the four Claimants and effectuated the transfer of their duties to the incumbent Dispatchers. All four Claimants displaced other positions in the same office. Thereafter three incumbent Dispatchers indicated that they were not qualified on the division formerly serviced by the Claimants. The record shows that the three incumbent Dispatchers were not compelled to perform the duties for which they alleged they were unqualified, and it further shows that they were not afforded the opportunity for familiarizing themselves with the territory as is provided for in Rule 10, Section 8 - Breaking In.

Numerous arguments were raised on the property. For example, the Organization claimed that the three incumbent Dispatchers who alleged that they were unqualified should have been allowed to "break in" in accordance with Rule 10, Section 8. The Carrier argued that there never was any protest that the district desk in question was or would be overloaded and, in any event, management had the right to determine the qualifications of the employees. The Organization contended that it was the deliberate decision of the Carrier to avoid compensation to the Dispatchers under Rule 10, Section 8 which precipitated this dispute. The Carrier asserted that it was the refusal of the incumbent Dispatchers to perform their assigned duties which caused the quarrel and, moreover, Claimants should not profit by their fellow workers' insubordination. There is no need to examine these accusations for they do not go to the heart of the dispute. As noted above, the question to be decided is whether anyone(s) performed Dispatcher's work who was not contractually authorized to do so.

The Organization claims in part, that since the duties on the desk in question were not performed by incumbent Dispatchers, it must be assumed that they were performed by management personnel. The Carrier denies this claim. Even though the assumption may have logic this Board may not decide claims on assumption. It requires proof, and the burden of proof is upon the party making the claim. Award 19467 - Edgett. The proof supplied by the Organization consists of two memoranda, both dated October 1, 1979, a memorandum dated October 12, 1979, and a copy of a message, undated, telephoned to a train dispatcher by a train master. These memoranda and the message, at best are subject to differing interpretations. They do not constitute unequivocal transfers of duties from Train Dispatchers to others. They do not, in our opinion, rise to the level of the clear and convincing proof which is needed to decide a hotly contested question of fact. In the absence of such proof we cannot hold that the agreement was violated. Award 22183 - Smedley. Had the Organization produced records or affidavits as to the work actually performed the result might have been different. In the absence of such evidence the claim must be denied. Award 18567 - Dolnick.

In view of decision to deny the claim the question of damages need not be reached.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1983.