

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26292
Docket Number TD-26031

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(The Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka & Santa Fe Railway Company (Carrier) violated its Train Dispatchers' schedule working conditions agreement, including but not limited to Article I, Sections 1(b) and 1(c) thereof as amended effective April 1, 1981, when it required incumbents of trick train dispatcher position 6518 to perform work related to the duties exclusively reserved to Chief and Assistant Chief Train Dispatchers under the provisions of said Section 1(b), on each of the following dates, July 1, 2, 15, 16, 22, 23, and 24, 1982.

(b) Because of said violations, the Carrier shall now compensate Claimant J. J. Jelinek, a regular assigned incumbent of trick train dispatcher position 6518 and who was required to perform the work referred to in paragraph (a) above, one (1) days' compensation at the rate of Assistant Chief Train Dispatcher for each of the above dates."

OPINION OF BOARD: Claimant herein was the occupant of a Relief Train Dispatcher position on the dates involved in this dispute. Part of his assignment was to relieve Position 6518 (Train Dispatcher) from 11:45 P.M. to 7:45 A.M. on Thursday and Friday. According to Carrier, and without contradiction by the Organization, for a period of several years certain report work had been accomplished by the incumbent of Position 6518. Subsequently, at an unspecified date, Carrier established the position of Assistant Chief Train Dispatcher No. 6520 on the 3rd Trick, who took over the preparation of the reports formerly handled by Train Dispatcher Position No. 6518. Those reports, which are the crux of the dispute are: the 5:00 A.M. Yard Report; Deadhead Crews and Held Away from Home Terminal Report; 7:00 A.M. Potash Report; Local Overtime Report; 7:00 A.M. Grain Report and Tonnage Report by the Train Dispatcher. On April 23, 1982, the Assistant Chief Train Dispatcher Position No. 6520 was abolished (due to a decline in business, according to Carrier) and the report preparation work reverted to the incumbents of Dispatcher Positions Nos. 6518 and 6514. Further, Claimant herein, as the relief for Position 6518 performed the report preparation on the two nights of the assignment. The Claims filed herein were for the nights Claimant relieved the two positions on their rest days; the incumbents of the two positions did not file Claims for the same work during their regular tours

of duty. The Assistant Chief Dispatcher Position No. 6520 was reestablished June 24, 1982, and starting July 29, 1982, the incumbent of that position again began to prepare the reports in question.

Article I, Sections 1-b, 1-c provide as follows:

"Section 1-b. Positions of Chief and Assistant Chief Train Dispatchers shall include positions, the duties of which are to be responsible for the supervision of trains on a Division or other assigned territory; the supervision of train dispatchers and other similar employees; the supervision of the movement of power and equipment incident thereto; and to perform related work.

Section 1-c. Positions of trick train dispatchers shall include positions, the duties of which are to be responsible for the movement of trains by train orders, centralized or other Traffic Control Systems (subject to Section 1-d), such as electronic equipment and/or other technological methods, where required. Trick train dispatchers positions shall supervise forces employed in handling train orders, keep necessary records incident thereto, and perform related work. It is understood that this definition does not preclude the performance of work defined as that of trick train dispatcher by Chief and Assistant Chief Train Dispatchers."

In addition, the parties entered into a letter of understanding, dated March 30, 1981, which provided in pertinent part:

"During negotiations leading up to the revised Scope Rule of the September 1, 1949 Agreement, it was agreed that operating practices in existence prior to the effective date of the revised Scope Rule (April 1, 1981) are considered to be in conformity with the revised Scope Rule. Claims covering such practices will therefore not be filed or progressed. Operating practices implemented in the future at other locations may not, in the opinion of the Organization, be considered in conformity with the revised Scope Rule in which event the Organization may, if it so desires, file claim.

If the above correctly outlines our understanding and agreement, please so indicate by affixing your signature in the space provided hereon."

The Organization argues that the Carrier failed to properly classify Train Dispatcher Position No. 6518 when it abolished the Assistant Chief Train Dispatcher position and added the functions of the Assistant Chief's position to that of the Train Dispatcher. This was a violation of Section 1-b and 1-c of Article I of the Agreement, according to the Organization. It is urged further that the work in question (the reports listed supra) had been accomplished by the Assistant Chief Train Dispatcher at the time the Agreement was signed, April 1, 1981, and continued to be performed in that manner until the position was abolished and the work added to Train Dispatcher Position 6518 without "proper classification and compensation." It is also argued that the Claim is totally sanctioned by the letter of understanding dated March 30, 1981. As an added point, the Organization insists that the Scope Rule is clear, precise and unambiguous, rather than being general and vague as contended by Carrier. In support of that contention the Organization relies on Third Division Award 16556 and Award No. 1 of Public Law Board No. 588 which dealt with identical language.

Carrier's position is essentially that the work in question is part of the normal duties of Trick Train Dispatchers, as specified in Section 1-c. Further, other Train Dispatchers, and in particular the regular incumbents of Positions 6514 and 6518, perform the same duties without complaint or Claim. This in itself, according to Carrier, is an admission that this Claim is not meritorious. In addition, Carrier asserts that the identical complained-of work is being performed throughout the system by Trick Train Dispatchers as well as clerical employees who are not even under the Agreement. With respect to the letter of understanding of March 30, 1981, Carrier notes that it specifically provides that practices in effect prior to the effective date of the revised Scope Rule are permitted to continue. Carrier points out that the reports have been prepared in the past by Train Dispatchers, Assistant Chief Train Dispatchers as well as clerical employees and this fact has not been disputed by the Organization.

As the Board views this dispute, the pivotal question is whether there is either language in the Scope Rule or practice to support the Claim. With respect to the Scope Rule the only applicable language in Section 1-b is the phrase "related work" and similarly in Section 1-c "related work" as well as "keep necessary records...." The Organization has argued that the term "related work" with respect to the Assistant Chief Train Dispatchers functions is relevant; there is reliance, in part, by the Organization on this Board's Third Division Award 11013, in which we stated, in part:

"The pivotal question, therefore, is whether the additional work given to the Dispatchers at Buffalo was related to their work as Dispatchers, under the Agreement. The phrase 'and to perform related work' in Article 1 (b) of the Agreement applies to the primary responsibility of Trick Train Dispatchers, which under the Agreement is to move trains by train orders or otherwise. The term 'related work' is inexact and can

be given meaning only when considered in the light of practice on this property at the place and under the circumstances in which the work is performed. There seems to be no question that before the consolidationSupervisory Dispatchers were responsible for and did perform work which the Employees allege (without contradiction by the Carrier) was transferred to them. Accordingly, the only meaningful practice available to determine if the additional work required of the Dispatcher is 'related work' under the Agreement is to examine what supervisory personnel did before the consolidation. Since the practice was that supervisory personnel did this work, it follows that such additional work was not related to the responsibilities of Trick Train Dispatchers under the Agreement."

The case at bar can be clearly distinguished, on a factual basis, from that quoted above. In this dispute the past practice is that the work had been accomplished in the past by both Supervisory and non-Supervisory personnel and also by clerical forces. Thus, there is no practice to support the Organization's interpretation. In addition, the language of the Scope Rule offers no comfort to the Organization since the records prepared in this dispute are not specifically or even remotely covered by the language of 1-b or 1-c. In sum, the Organization has not borne its burden of proof: there is no entitlement to the work demonstrated either by practice or the language of the Scope Rule.

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

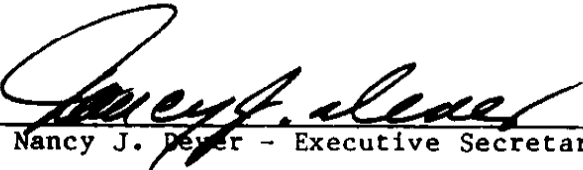
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois this 24th day of April 1987.