

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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 ('Carrier' or 'ConRail') violated Rule 1-Scope of its Train Dispatchers' schedule working conditions Agreement, when, effective at or about 6:26 p.m. CST February 17, 1983, it made changes in operations which
- (1) removed and transferred control and operation of that portion of the Traffic Control System ('TCS') governing Control Point ('CP') 192 from its Train Dispatchers in the Jackson, Mich. office to its Block Operator employees at Michigan City Drawbridge, and
 - (2) effectively transferred from Train Dispatchers in its Jackson, Mich. office, to Block Operators at Michigan City Drawbridge,
 - (1) primary responsibility for the movement of westward trains between new CP 190 at Mile Post 190.5 and CP 211, and eastward trains between CP 192 and CP 180, and
 - (11) supervision of the movement and handling of such trains and pertinent employees associated therewith.
- (b) Because of said violations, the Carrier shall now compensate
- (1) the senior extra Train Dispatcher respectively available on each shift in the Jackson, Mich. office, one (1) day's pay at the rate applicable to Trick Train Dispatchers beginning at 6:26 pm CST February 17, 1983 and continuing on each subsequent shift and date thereafter until the duties referred to in paragraphs (a)(1) and (a)(2)(1) above are returned to Trick Train Dispatchers in the Michigan seniority district and

- (2) the next senior extra Train Dispatcher respectively available on each shift in the Jackson, Mich. office, one (1) day's pay at the rate applicable to Assistant Chief Dispatchers effective 6:26p.m. CST February 17, 1983 and continuing on each subsequent shift and date thereafter until the duties referred to in paragraph (a)(2)(ii) above are returned to Chief and Assistant Chief Dispatchers in the Michigan seniority district.
- (c) In the event no qualified extra Train Dispatcher(s) are available for any of the respective shifts specified in paragraphs (b)(1) or (b)(2) above, the claim is made on behalf of the senior qualified regularly assigned Train Dispatcher available for such shift or shifts, at the appropriate rate.
- (d) In the event no qualified regularly assigned Train Dispatcher is available under the conditions set forth in paragraph (c) above, the claim is made on behalf of the senior qualified Train Dispatcher who is off duty during such shift or shifts.
- (e) Eligible individual Claimants entitled to the compensation claimed herein include C. W. Ernst, P. M. Leahy, D. B. Campbell, R. W. Linna, C. O. Davis, N. C. Lantz, R. M. Latva, G. E. Ferguson, T. D. Staelens, C. E. Austin, C. Humphreys and J. W. Wooster, are readily ascertainable on a continuing basis from the Carrier's records, and shall be determined by a joint check thereof in order to avoid the necessity of presenting a multiplicity of daily claims."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On April 1, 1976, Amtrak purchased certain trackage between Kalamazoo, Michigan, and Porter, Indiana. After acquisition of this Line, Amtrak maintained the physical facilities and had Conrail employees operate its trains, handle the dispatching duties, and man the Michigan City Drawbridge and Interlocking Plant. Prior to February, 1981, Conrail employees, represented by the Dispatchers' Organization, operated a TCS machine located at the

Jackson, Michigan, dispatching office which controlled interlocking functions at CP-192, CP-211, and CP-213. Conrail Block Operators, represented by the Brotherhood of Railway and Airline Clerks located at Michigan City, operated a TCS machine which manipulated other control points and the Drawbridge. As a part of Amtrak's Line rehabilitation program, the physical operation of TCS levers for CP-192, CP-211, and CP-213 was moved from the machine at Jackson to the machine at Michigan City. Dispatchers no longer physically manipulated the controls for the three control points, but they did continue to direct Block Operators in these duties.

The first phase of the move from Jackson to Michigan City occurred in February, 1981. At that time, the Organization progressed a Claim contending that its Agreement was violated when work connected with TCS machine control levers for CP-211 and CP-213 was transferred to Block Operators at Michigan City. This Claim was progressed to this Board and while pending here, the Organization requested that it be withdrawn. This request was honored in our Award 24784. The next event in the move occurred in February, 1983. At this time, the TCS machine operation of CP-192 was transferred from Jackson to Michigan City. This change resulted in the Claim which is now before us.

The Organization contends that a specific provision of its Scope Rule was violated when TCS machine work was transferred from Jackson to Michigan City. The Rule relied upon, 1(d), provides:

"It is agreed that any work specified herein which is being performed on the property of any former component railroad by other than employees covered by this Agreement may continue to be performed by such other Conrail employees at the locations at which such work was performed by history and past practice or agreement on the effective date of this Agreement; and it is agreed that work not included within the Scope which is being performed on the property of any former component railroad by employees covered by this Agreement will not be removed from such employees at the locations at which such work was performed by history and past practice or agreement on the effective date of this Agreement."

It is contended the last section is a special Rule that insures that work not exclusively considered Dispatchers' work will continue to be work subject to the Agreement. It is argued the work that was transferred from Jackson Dispatchers to Michigan City Block Operators is specifically work contemplated by this Rule.

The Carrier responds with a number of defenses. First, it argues the issue in this Docket is the same as that involved in Award 24784. Thus, the matter has been decided, and the Organization cannot now relitigate the issue. Secondly, the Carrier contends it does not control Amtrak and has no say in where that Corporation desires to perform its interlocking operations on Lines it owns. Thirdly, the Carrier contends that BRAC is a necessary Third Party to the dispute. Also, it contends the Agreement does not require that it assign Dispatchers to perform the disputed work.

BRAC filed a Third Party Submission in this Docket and argued that it has the exclusive right to perform TCS machine work at Michigan City.

We will deal with the matter of Award 24784 first. Both parties have cited a number of decisions that each argue support on the one hand a contention that the Claim is barred or on the other that it is not. Examination of these decisions, though, fail to indicate that any are directly on point with the facts before us. It seems that not one of the Awards brought to our attention deal with a grievance that was dismissed by the Board at the ex parte request of the Organization.

In Award 24784, the Organization unilaterally requested that the Claim concerning CP-211 and CP-213 be withdrawn without prejudice. This request was promptly granted by the Board. We are in full accord with the concept and decisions holding that Awards of the Board are final and binding and that the doctrine of res judicata applies to litigated matters, but we cannot conclude these considerations prevent our adjudication of the Claim involving CP-192 on the basis that the Union withdrew the Claim concerning CP-211 and CP-213. The case that was withdrawn was never, in any fashion, adjudicated by the Board. While it may obviously be the subject of a final and binding dismissal Award, it does not prevent consideration of a similar claim simply because no adjudication of the issue occurred. This Claim will not be dismissed, as requested by the Carrier, on the basis that Award 24784 settled the matter.

In looking at the merits of the case, we find the Organization is claiming that the work connected with operating the TCS machine for CP-192 must be performed by employees of the Dispatchers Craft. The Dispatchers contend this work is specifically reserved to them by the second part of Rule 1(d) quoted above. The Dispatchers do not contend that all work of this type must be done by members of its Craft, only that work that was performed by Dispatchers at the time the Agreement was made effective is theirs to perform. The Third Party Clerks, which incidentally have a clause in its Agreement identical to Dispatchers' Rule 1(d), contend the work connected with TCS machine operation for CP-192 is now Block Operators' work and reserved to members of its Craft by Agreement provision.

Examination of Rule 1(d) indicates that certain "grandfather" considerations are provided with respect to the "property of any former component railroad." The Rule was adopted on September 1, 1979. The Line of road involved in this Claim was acquired by Amtrak almost three and one-half years earlier, on April 1, 1976. Amtrak, also, is not nor ever has been a component railroad part of Conrail. It acquired the Line between Kalamazoo and Porter at the same time that Conrail was created by acquiring properties of several bankrupt Carriers pursuant to the Regional Rail Reorganization Act of 1973.

The Organization has candidly indicated that work of throwing TCS machine switches is not exclusively Dispatchers' work. It does seek to have the work involved in this dispute retained by Dispatchers on the basis that at the time its Agreement was signed, it was performed on the property of a component railroad of Conrail by Dispatchers. For the Board to adopt this view, it would be necessary to place Amtrak in the status of a component railroad, as that term is used in Rule 1(d).

This would not be factual. Amtrak is not a component railroad of Conrail. It is a Corporation that has contracted with Conrail for certain services and personnel on trackage operations it acquired at the same time that Conrail was created.

It is our view the Organization has not acquired a license, by the language of Rule 1(d), to freeze Amtrak TCS work in the Jackson dispatching office. Rule 1(d) by its very language is designed to deal with work distribution between competing crafts of component railroads that became Conrail. In one instance, it permits dispatching work that is covered by the Agreement to be performed by employees not covered by the Agreement. In the other, it retains the performance of work not covered by the Agreement to Dispatchers. In both instances, though, the work that is dealt with is that of component railroads. The Organization would have us apply the Rule to Amtrak work. This we cannot do as the Rule does not mention Amtrak and, by its very specificity, does not preserve Amtrak work to Conrail Dispatchers.

Accordingly, having found that Rule 1(d) is inappropriate support for the Claim, it must fail for lack of Rule support.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.

LABOR MEMBER'S DISSENT
to
Third Division Award 26930 - Docket TD-25875
(Referee McAllister)

The territory involved in this dispute was formerly owned by the Michigan Central Railroad - a "former component" of both Penn Central and Consolidated Rail Corporation. Amtrak purchased the territory on April 1, 1976, but contracted with ConRail for the latter to continue to perform the associated train dispatching functions.

The Award recognizes:

"Examination of Rule 1(d) indicates that certain 'grand-father' considerations are provided with respect to the 'property of any former component railroad.'" (p. 5)

The reference to "work . . . being performed on the property of any former component railroad" in Rule 1(d) obviously means on property formerly owned by any component railroad of ConRail, rather than to the present owner of the property (Amtrak).

Amtrak's purchase of the territory on April 1, 1976 did not change the fact that it was "the property of [a] former component railroad".

The Award does not draw its essence from the Agreement, is without basis in reason or fact, and is thus outside the scope of the Division's jurisdiction. Bro. of Railroad Trainmen vs. Central of Georgia Rwy., USCA (5), 1969, 415 F.2d 403; 71 LRRM 3042.

I must dissent.



R. J. Irvin
Labor Member