

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 (hereinafter referred to as the 'Carrier') violated RULE 1 - Scope of its current Train Dispatchers agreement when it permitted the removal of work as specified in RULE 1 from the employees of the Harrisburg, PA., dispatchers office to employees classified as Yardmasters under the collective bargaining agreement at its Bay View Yard in Baltimore, Md.

(b) Because of said violation the Carrier shall now compensate the senior available Train Dispatcher for each tour of duty that such violation continues, the applicable rate of pay commencing at 11:00 P.M., September 22, 1983.

(c) In the event there are no employees available at the straight time rate of pay, the claim is then made in behalf of the senior regularly assigned Train Dispatcher at the overtime rate of pay.

(d) This is to be considered as a continuing claim for each and every tour of duty commencing 11:00 P.M., September 22, 1983 and continuing on subsequent dates thereafter that such violation continues. This shall also include Extra Train Dispatchers.

(e) Eligible individual claimants entitled to compensation as requested in paragraphs (c) and (d) are readily ascertainable on a continuing basis from the Carriers records and shall be determined by a joint check thereof. The initial claimants requested in paragraph (b) are:

3rd Trick -- H. W. Maxwell - September 22, 1983
1st Trick -- J. L. Renninger - September 23, 1983"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On September 22, 1983, the Superintendent of the Harrisburg Division issued the following bulletin:

"Effective 4:59 P.M., Thursday, September 22, 1983

(a) COCKEYSVILLE SECONDARY TRACK
B & P JUNCTION - COCKEYSVILLE
CP-MT. VERNON

Cockeysville Secondary Track between MP 0.0
MP 3.0 redesignated Mt. Vernon Industrial
Track, and between MP 3.0 and MP 13.5 re-
designated Cockeysville Industrial Track.

Between B & P Jct. and CP-Mt. Vernon, TCS
Rules 261-265, out of service. Between CP-Mt.
Vernon and Cockeysville, Signal Rules 271-273
and MBS Rules 305-342, out of service.

Rule 113 applies on the Mt. Vernon Industrial
Track and on the Cockeysville Industrial
Track.

CP-Mt. Vernon and associated interlocking
signals, out of service. Signal N-32, located
3500 feet west of CP-Mt. Vernon, governing
eastward movement on Cockeysville Secondary
track, out of service.

Fixed signal N-10, located 5245 feet west of
B & P Jct., governing eastward movement on
Cockeysville Industrial Track, in service.
Signal N-10 is equipped to display the
following aspect:

Rule 285 (A) Approach to Stop Figure A

Mt. Vernon Industrial Track and Cockeysville
Track are controlled by Yardmaster, Bay View.

Reference to Cockeysville Secondary Track,
Page 40A, deleted.

(b) NEW HOLLAND INDUSTRIAL TRACK

The New Holland Industrial Track between MP 24.8 and a point 4570 feet west of MP 38.0, is designated 'Excepted Track' in accordance with FRA 49, CFR 213.4.

Passenger trains and freight trains containing more than 5 cars of Hazardous Materials must not be operated on the track.

Speed must not exceed 10 MPH."

On November 17, 1983, the Office Chairman filed a claim protesting the bulletin. It was claimed that it violated the Agreement by unilaterally removing control of the tracks in question from the Trick Dispatchers and by the subsequent assignment to the Yardmasters. This claim was reviewed and appealed, ultimately, to the Board. At the Board, the Yardmasters were given Third Party notice and filed a Submission.

The Train Dispatchers rely on Rule 1(a) and (d) which are quoted as follows:

"RULE 1 - SCOPE

(a) The term 'train dispatcher' as hereinafter used (and as defined in paragraph (b) of this Rule) shall be understood to include chief, assistant chief, trick, relief, guaranteed assigned and extra dispatchers and dispatcher assistants, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters and have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more than one chief dispatcher in each dispatching office.

(b) 1. . . .

2. Trick Dispatchers, Relief Dispatchers, Extra Dispatchers, Guaranteed Assigned Dispatchers

Trick Train Dispatcher: Relief Train Dispatcher: Extra Train Dispatcher: Guaranteed Assigned Dispatcher: these classes shall include positions in which it is the duty of incumbents 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.

3. Dispatcher Assistants.

. . . .

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....

(c)

(d) 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."

They point to previous bulletins showing the work on these tracks being assigned to Harrisburg Dispatchers. Essentially they contend the work of controlling the tracks in question still exists and has not been eliminated. So long as the track exists and control of trains is necessary "by train orders or otherwise," they contend the work is theirs. They also argue that the Yardmaster's Scope Agreement is not applicable since it only applies at points where Yardmasters are employed. There are no Yardmaster employees at the point in question.

The Carrier emphasizes that the Cockeyville Secondary Track between MP 0.0 and MP 3.0 has been redesignated as the Mt. Vernon Industrial Track and between MP 3.0 and MP 13.5 has been redesignated as the Cockeyville Industrial Track. It is also noted that it was designated that the various TCS and Signal Rules were out of service and only Fixed Signal N-10 governing eastward movement on the Cockeyville Industrial Track would be in service. Thus, they contend the work previously performed by Dispatchers (i.e., the control of a secondary track) no longer exists. The work which remains relates not to secondary tracks but Industrial tracks. Industrial tracks are, in their opinion, reserved to Yardmasters by virtue of their Scope Agreement which states:

"Where yard masters are employed they will report to and receive their instructions and directions, if any, from the superintendent, trainmaster or other designated official, and shall have jurisdiction over all employees in their assigned territory involved in yard operations, make up and movement of trains, engines and cars therein, including all industrial switching. Within the territory assigned, a yard master must determine:

Crews report for duty with prescribed number of employees at the appointed times;

Employees properly discharge their duties;

Trains are made up correctly and promptly moved at times prescribed;

Waybills have been received and furnished together with any instructions concerning restricted cars or shipments;

Cars and engines are handled carefully;

and in conjunction with the foregoing, yard masters will plan, coordinate and effect economical operation, seeing there is full compliance with operating and safety rules."
(Emphasis added)

Essentially the Yardmaster Organization agrees with the Carrier.

It is the conclusion of the Board that the Carrier removed the work in question in violation of Rule 1 of the Train Dispatchers' Agreement. This Scope Rule is specific as to these facts inasmuch as it covers positions primarily responsible for the movement of trains "... by train orders, or otherwise" This is the key phrase and so long as trains on the tracks in question under the facts presented here are being controlled by train order or otherwise, the work is reserved to the Dispatchers.

The mere designation of the track as an Industrial track is essentially irrelevant under these circumstances. The determining factor is whether there is a train--outside yard limits where a Yardmaster has never been employed--which requires direction of control. There is nothing to suggest that trains do not require control on these tracks particularly since "control" of the tracks in question was given to the Yardmaster. Clearly the work has not been eliminated.

Nor is the Yardmaster's Scope Rule ultimately relevant. It is appropriately pointed out by the ATDA that the Yardmaster Scope is limited to points where Yardmasters are employed. It could be argued based on the construction of the Scope Rule language that Yardmaster rights to industrial switching are limited to "yard operations." Moreover, any claim by the Yardmasters would have to overcome Rule 1(d) in the Dispatchers Agreement.

While the Board agrees the Scope Rule was violated, it also believes it is without jurisdiction to award the penalty requested by the Organization since there is no evidence of any quantifiable loss of work opportunities. Thus, in the absence of such evidence we are left to conclude the damages are de minimus. The remedy is therefore limited to suggesting the Carrier return the work to the Dispatchers' craft. This decision is limited to the unique facts and circumstances of this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 27109, DOCKET TD-26282
(Referee Vernon)

It has been well settled on this property that the Carrier has the right to reclassify a track and assign control to yardmasters so long as it is done in good faith for reasonable cause, not upon whim or fancy (Third Division Award 11239).

The dispute in this case is bottomed on the present scope rule with the ATDA and in particular that language relating to the train dispatchers' responsibility for the movement of trains "...by train orders or otherwise...." The determining factor being whether the train requires direction of control.

The Cockeyville Secondary track before reclassification was operated with signals and interlocking, a Block Station and Train Order Station at C. P. Mount Vernon. This system, under Carrier's Operating rules, required direction of control by the dispatcher.

After reclassification to the Mt. Vernon Industrial Track - Cockeyville Industrial track, this stub end track was operated without signals, or involvement of an interlocking, Block Station or Train Order Station. Under this system, in compliance with Carrier's Operating Rules, no direction of control is required by the Conrail dispatcher.

The Bayview South End yardmaster issues orders to the crew under his jurisdiction as to the switching work to be performed. Once the Switch Crew enters the Industrial track there is no further direction or control required for the crew's protection to move up and down that track completing the switching work required as that crew is the only crew permitted access to that track at that time.

Not only has the Board majority "missed the boat" in failing to understand that the nature of control encompasses the performance of work under the authority of Carrier's Operating Rules, but also in their interpretation of the Yardmasters contract. The key element in that contract with respect to this dispute is not the words "Where yard masters are employed" but, rather, the phrase "...and shall have jurisdiction over all employees in their territory..." (emphasis added). By official notice, this industrial track was territory assigned to a yardmaster. His jurisdiction, of course, does not impinge on the Scope of the ATDA because the performance or work controlling trains by train order or otherwise on the Industrial Track was not performed by a yardmaster. Rather, it was eliminated.

In this case, there was no violation of the ATDA Scope Rule and we dissent to this erroneous conclusion by the Board majority.

Robert L Hicks

R. L. Hicks

Michael C. Lesnik

M. C. Lesnik

James E. Yost

J. E. Yost

M. W. Fingerhut

M. W. Fingerhut

P. V. Varga

P. V. Varga

LABOR MEMBER'S REPLY
to
Carrier Members' Dissent to
Award 27109 - Docket TD-26282
(Referee Vernon)

The Carrier Members' reference to Third Division Award 11239 is perplexing, since they go on to acknowledge the dispute is bottomed on the present Scope Rule. Indeed, the present Scope Rule is a far cry from that considered in Award 11239, and that Award is of no value as precedent in a case such as this.

The balance of the Dissent is more of the same obfuscating argument submitted by Carrier, astonishing in its unrestrained audacity. But the Carrier made one truthful admission:

"The only change in the whole operation was that the train dispatchers were no longer responsible for the control and movement of trains over the former Cockeyville Secondary Track."

The Carrier may call a track whatever it wishes. Since it is the nature of the work that is determinative of its Agreement coverage or "ownership", and not the method of performance, the work here in question—responsibility for the movement of trains by train orders, or otherwise—may not be reassigned to another craft or class by a change in methodology. And that's all that's involved in the change from "Secondary Track" to "Industrial Track".

Third Division Award 13189:

"Once it is ascertained that a certain kind of work belongs to a class or craft of employes under the provisions of an Agreement, either specifically or impliedly, that work belongs to such class or craft, regardless of the method or equipment used to perform the work. The Agreement applies to the character of the work and not merely to the method of performing it."

To say the work "was eliminated", as do the Dissenters, conveniently ignores the facts. During the on-property handling of this dispute, the General Chairman reminded the Carrier that train operations on the former Cockeyville Secondary Track remained unchanged after its re-designation. "The Local is still running on the Cockeyville Industrial track," he wrote. The Carrier made no answer.

The record also clearly demonstrated that Train Dispatchers are responsible for the movement of trains on Industrial Tracks.

The Dissent is unwarranted and sheds no light. The Award's only fault, from this writer's perspective, is its failure to allow monetary reparations as a deterrent to such flagrant and persistent violations of the Scope Rule.

Labor Member's Reply to Carrier Members' Dissent to Award 27109

Even if the Carrier's defensive tactics (and the Yardmasters') had merit, the correct, intended operation of Rule 1(d) would still reserve the work to the Train Dispatchers.

A handwritten signature in cursive script, appearing to read "R. J. Irvin".

R. J. Irvin
Labor Member