

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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:

CLAIM NO. 1 - System Docket CR-250

(a) The Consolidated Rail Corporation (hereinafter referred to as the 'Carrier') violated its Train Dispatchers' schedule agreement, including RULES 1(b) 2 and 1(d) thereof, when it transferred control of the Middleport, Good Spring, Buckley, Greenwood and Shenandoah Industrial Tracks to another employee not covered by RULE 1(b) 2 effective 2:59 P.M., Monday, November 7, 1983.

(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 2:59 P.M., November 7, 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 continuing claim for each and every tour of duty commencing 2:59 P.M., November 7, 1983 and subsequent dates thereafter that such violation continues, which also shall include Extra Train Dispatchers.

(e) Eligible individual Claimants entitled to the compensation claimed herein 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.

CLAIM #2 - System Docket CR-256

(a) The Consolidated Rail Corporation (hereinafter referred to as the 'Carrier') violated its Train Dispatchers' schedule agreement, including RULES 1(b) 2 and 1(d) thereof when it transferred control of the New Holland Industrial track to another employee not covered by RULE 1(b) 2 effective 12:02 A.M., Monday, February 6, 1984.

(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 12:02 A.M., February 6, 1984.

(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 at 12:02 A.M., February 6, 1984 and subsequent dates thereafter that such violation continues, which also shall include Extra Train Dispatchers.

(e) Eligible individual Claimants entitled to the compensation claimed herein 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 employe 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.

The essential facts are not in dispute. On November 7, 1983, by Bulletin Order No. 2-233, control of train movements formally done by Train Dispatchers on Middleport, Good Spring, Buckley, Greenwood and Shenandoah Industrial Tracks was ended. The Yardmaster at West Cressona, as stated in the aforementioned Bulletin, was put in "control" of said track. Similarly, under Bulletin Order No. 2-254 dated February 1, 1984, the "control of the New Holland Industrial Track transferred from the Operator at Day to the Yard Master at Dillerville," effective February 6, 1984.

The Organization maintains that said work belongs to the Train Dispatchers under the Scope Rule of the Train Dispatchers Agreement, Rule 1(b)2, and 1(d). It argues that its removal and transference to Yardmasters was a violation of that Agreement. It further notes that work previously performed under this Agreement could not be removed from the employees under these circumstances. As said work is still being performed and was historically and by past practice performed by Train Dispatchers, the Carrier violated the Agreement by its actions.

It is the Carrier's position that said work has not been transferred to the Yardmasters in violation of the Agreement, but is their work due to various changes. Most notably the track is designated as an Industrial track and as Carrier states "it is not the normal operating procedure for a Train

Dispatcher to control movements on Industrial tracks." Carrier argues that there was no train dispatching work to be performed. Once the train was on an Industrial track, the train dispatcher was no longer responsible for the control of its movements. Carrier also notes that where Yardmasters are employed they have jurisdiction over such in their assigned territories.

In a Third Party Submission, the Yardmasters point out that the areas herein disputed are under the control of the Yardmaster on duty at West Cressona. As per the Yardmaster's Scope Rule, they have jurisdiction over all operations within their assigned territory.

This Board has carefully reviewed the positions and the evidence in the instant case. The Board finds that the Carrier has violated the Agreement. The June 1, 1983 Bulletin, as well as other evidence, indicates that these tracks were formerly controlled by Train Dispatchers and were within the Scope of the Train Dispatchers Agreement. That Scope Rule holds that Train Dispatchers are responsible for the movement of trains "by train orders, or otherwise." In the facts of this case, trains still operate on these same tracks and must be controlled "by train orders, or otherwise" whether these tracks are called Industrial or not. The evidence of record further shows that the territory over which this dispute centers was not within yard limits or previously under the control of Yardmasters. The Organization has provided sufficient probative evidence to show that the work was removed in violation of Rule 1 of their Agreement.


This Board finds that the claimed work belongs to the Train Dispatchers. Under the specific circumstances of the instant case, which involves work that takes "only minutes to perform," and a claim which lacks specificity with regard to the exact compensation requested, the Board is unable to award what the employees request. This finding is consistent with Third Division Award 27109 to which we concur in both reasoning and remedy. We must conclude that the de minimus doctrine applies. In the instant circumstances, this Board cannot award a penalty.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

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