

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Soo Line Railroad Company

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

(a) The Soo Line Railroad Company (hereinafter referred to as 'the Carrier') violated the Agreement between Soo Line Railroad Company and its Train Dispatchers Represented by the American Train Dispatchers Association, effective March 20, 1961, as revised effective August 24, 1983, including Rules 3(c) and 10(d), when the Carrier directed and required train dispatchers, including train dispatcher J. P. Erickson, (hereinafter referred to as 'the Claimant') on March 14, 1985 to issue a line up (train location report for foremen and track car operators) covering territory outside of the dispatching territory of the train dispatcher position assigned to the Claimant or the train dispatcher position which the Claimant had been instructed to fill.

(b) The Carrier shall now be required to compensate the Claimant at the rate of time and one-half for working off assignment on the claim date shown above, less compensation allowed the Claimant for service performed by the Claimant on the train dispatcher assignment assigned to the Claimant or the train dispatcher position which the Claimant had been instructed to fill."

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 employee 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 various dates between March 14 and August 30, 1985, East Side Train Dispatchers on Carrier's Paynesville Subdivision were instructed to issue lineups for all the territory between Shoreham and Glenwood, some of which between Paynesville and Shoreham is operated under Centralized Traffic Control (CTC). Under terms of a Letter Agreement of March 11, 1985, between Carrier and the Organization, the respective territories of the East Side and CTC had been redefined as follows:

"CENTRALIZED TRAFFIC CONTROL (C.T.C.)...C.T.C. All Tricks  
Monday through Friday C.T.C. Territory  
Paynesville to Withrow and Cardigan Jct.  
to Parkway Jct Plus Northfield Subdivision  
Saturday and Sunday Dispatching Territory  
Handled Mon. through Fri., Plus Paynesville,  
Brooten, Bemidji, Danbury, New Richmond and  
Barron Subdivision.

EAST SIDE.....East Side All Tricks Paynesville and New  
Richmond (except for C.T.C. Territory) subs  
plus Brooten, Bemidji, Barron and Danbury  
Subdivisions."

In this Claim the Organization argues that by issuing instructions which required the East Side Train Dispatchers to issue lineups concerning movement on a portion of the CTC territory, Carrier violated Rules 3(c) and 10(d) of the Basic Agreement:

Rule 3(c)

"Assigned assistant and/or night chief dispatchers and trick train dispatchers who are directed by the management to perform service as trick train dispatcher outside of their regular assigned position will be compensated at the rate of time and one-half of the trick train dispatcher position filled. Penalty time under this agreement will not apply to employees who obtain new assignments through the exercise of seniority, until initial service performed on new assignment, or when directed to perform service as chief, assistant and/or night chief dispatcher."

Rule 10(d)

"Vacancies or new positions known to be for, or authorized for, more than ninety (90) days' duration will be considered regular assignments of a permanent nature. Notice of such vacancy or new position shall be posted in the office where existing for a period of seventy-two (72) hours and assigned to the senior qualified applicant regularly assigned in that office making application. Positions left unfilled will then be promptly bulletined to all train dispatchers on the system for a period of ten (10) days and assignment made to the senior qualified applicant within ten (10) days from the close of the bulletin provided, however, the bulletin may be closed and assignment made immediately upon receipt of application from the senior train dispatcher on the system. In the event no applications are received, the senior extra dispatcher on the system will be assigned thereto.

A train dispatcher assigned to a vacancy or new position under this Section (d), caused by a train dispatcher being absent account of physical disability shall revert to his former assignment when such absent train dispatcher returns to service.

Notices and bulletins issued under the provisions of this Rule 10 will show position, location, rest days, hours of service and dispatching territory. Applications will be made in duplicate and one copy returned to applicant as acknowledged."

The Claim received final denial by Carrier's letter of October 16, 1985, reading in pertinent part as follows:

"According to the information I have received, it is felt that the most safe and efficient operating procedure requires that only one lineup be issued on the Paynesville Subdivision. The east side dispatcher is responsible for issuing slow and cautionary orders in CTC territory on the Paynesville Subdivision. In order that he may accomplish this function, it is necessary that he know when trains are operated between MN&S Junction and Paynesville. As you are aware, trains do not leave Shoreham, which is within CTC territory, without clearance of the east side dispatcher. The east side train dispatchers were not required to perform work outside of their assigned dispatching territory, but merely found it necessary to issue these lineups in order to safely and efficiently accomplish the full responsibility of their assignment. The Claimants were not required to perform service as trick train dispatchers, as you allege, outside of their regularly assigned position and only performed functions that were necessary in conjunction with the responsibility of their own assignment. It is the intent of Rule 3(c) to provide compensation at the time and one-half rate to dispatchers who are removed from their regular position at the direction of Management and required to fill a trick train dispatcher assignment. Such is certainly not the case with which we are here concerned and the rule does not provide additional compensation, as you are claiming, under these circumstances.

The March 11, 1985 Agreement merely identifies territories as required by schedule rules. That Agreement does not under any circumstances limit or restrict necessary duties of the respective assignments.

For these reasons, your Claim is clearly without support of schedule rule and/or agreement and is respectfully denied in its entirety."

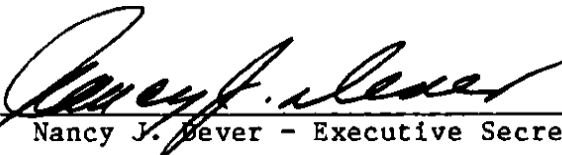
Careful review of the record, with special attention to the Agreement language of Rules 3(c) and 10(d), shows that Rule 3(c) is a Call Rule with no application at all to the issuance of lineups within or without a territory and the record is devoid of any showing whatsoever that Rule 10(d) was violated. Accordingly, there is neither factual nor contractual support for the claimed violation on this record and it must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.

LABOR MEMBER'S DISSENT

AWARD NO. 28393

DOCKET TD-27956

Contrary to the Majority opinion in Award 28393, Rule 3(c) is a penalty rule, not simply a call rule. This is clearly evident, wherein the rule itself provides for penalty time.

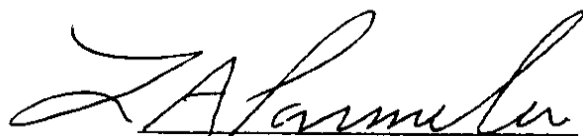
Third Division Award No. 3963

"This is a pure penalty case. The claimant does not claim that he was deprived of work. The complaint is that the Carrier violated the Agreement and should be penalized therefor...Of the utmost importance is strict adherence to Agreements made in the processes of collective bargaining;..."

Penalty pay was not only appropriate, but mandated when the claimant was required to issue line ups on territory outside of his regular assigned position. Specifically, the area between Shoreham and Paynesville, which was the assigned territory of another dispatcher.

The opinion expressed in Award 28393 collides "head on" with the true meaning and intent of the Rule 3(c), yet the opinion is entirely void of explanatory reasoning.

Thus, this dissent is essential.



L. A. Parmelee  
Labor Member