Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29681
Docket No. TD-29352
92-3-90-3-266

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(a) CSX Transportation, Inc. ('Carrier') violated its Train Dispatchers' basic schedule agreement applicable in the Jacksonville centralized train dispatching center ('JCTDC'), including Article 1(b) 1 thereof, when, on and after January 1, 1989, it allowed non-agreement personnel in its Jacksonville Control Center to issue instructions direct to mechanical department and various yard forces concerning the motive power to be assigned to trains moving on the Florence Division.

(b) Because of the lost work opportunities resulting from said violation, the Carrier shall now allow one (1) day's pay at the rate applicable to Assistant Chief Train Dispatchers in the JCTDC for each of the three shifts, beginning with first shift on January 1, 1989 and continuing on each shift and date thereafter until the violation ceases, to a pool of Train Dispatchers holding seniority on the JCTDC seniority roster (including those referred to in Section 9(b) of the January 9, 1988 Memorandum Agreement), in addition to any other compensation they may have for such dates.

(c) The identities of individual claimants included in the pool referred to in paragraph (b) above shall be determined by a joint check of the JCTDC seniority roster, in order to avoid the necessity of presenting a multiplicity of daily claims. The division of the money among such pool shall be determined by the American Train Dispatchers Association."

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 employe 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 Organization has filed this Claim, which is one of several similiar Claims pending with the Carrier, on the basis that Carrier has allowed non-Agreement personnel in its Jacksonville Control Center to issue instructions directly to mechanical department and various yard forces concerning the motive power to be assigned to trains. The Organization alleges this work is reserved exclusively to Chief, Night Chief and/or Assistant Chief Dispatchers under the provisions of Article 1 - Scope of the January 9, 1988 Agreement, which reads, in pertinent part, as follows:

"(b) Definitions

1. Chief Train Dispatchers
Night Chief Dispatchers
Assistant Chief Train Dispatchers

These classes shall include positions in which it is the duty of incumbents to be responsible for the movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

* * *

NOTE: These definitions 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. The compensation of employees performing the work of two or more of the classes herein defined shall be that of the highest rated class of work which they perform."

This is a dispute that is not without some history, predating the creation of CSX Transportation, Inc. On August 24, 1979, ATDA General Chairman Shay filed a complaint with the Director of Labor Relations of the Louisville & Nashville Railroad (L&N), one of the predecessor companies of CSX Transportation, requesting that the positions of Assistant Directors of Train Operations and Managers of Train Operations at the Transportation Control Center in Louisville be reclassified as Assistant Chief, Night Chief or Chief Train Dispatcher positions. This request was made pursuant to the May 27, 1937 National Agreement, amended by the May 30, 1979 National Agreement (the "37/79 Agreement"), and was progressed to the Railroad-Train Dispatchers Joint Committee, which deadlocked. The issue was then presented to ATDA President Hilbert and NRLC Chairman Hopkins, who also deadlocked.

On March 10, 1981, a similar request was filed by ATDA General Chairman Mullinax with the Director of Labor Relations of the Seaboard Coast Line (SCL), another predecessor company. It, too, was progressed until ATDA President Collins and Hopkins deadlocked.

The ATDA, on August 21, 1984, proposed the establishment of a Special Board of Adjustment under Section 3 of the Railway Labor Act, to resolve the dispute concerning the SCL. Because the parties were unable to concur on a statement of issue to be presented to an SBA, an Agreement to establish the Board could not be reached. Carrier subsequently informed the National Mediation Board (NMB) that the Organization's request for a Special Board of Adjustment was inappropriate as the Organization was either seeking to change existing Agreements or was attempting to submit a representation dispute. The NMB then established a Procedural Board with William E. Fredenberger, Jr. serving as Neutral Member. Before the Procedural Neutral, the Organization proposed the following Question at Issue:

> "Dispute concerning proper classification of certain positions now located in the Carrier's Operations Control Center, Jacksonville, Florida, arising out of two separate complaints (dated August 24, 1979 and March 10, 1981, respectively) presented under the Agreement Dated May 30, 1979 (amending the May 27, 1937 National Agreement) between Railroads represented by the National Carrier's conference Committee and employees of such railroads represented by the American Train Dispatchers Association."

The Procedural Neutral accepted the Organization's proposal as the one to be presented to the Merits Board, rejecting the Carrier's proposed Question at Issue, which read as follows:

> "Are the American Train Dispatchers Association Representatives correct in their contention that work being performed by employees in the Operations Center on Seaboard System Railroad in Jacksonville, Florida is a violation of the ATDA's scope rule?"

The Carrier tried, unsuccessfully, to reopen the proceedings before the Procedural Neutral, on the basis that the Organization, in litigation involving the ATDA and the Maine Central Railroad, had taken the position that disputes handled under the "37/79 Agreement" were not arbitrable. The Organization's Question was then presented to Public Law Board No. 3829, with Herbert L. Marx, Jr. serving as the Neutral Member.

On November 30, 1988, Public Law Board No. 3829 issued its decision in the matter before it, denying the Organization's Claim. In doing so, the Board held:

> "Considerably more convincing is the Carrier's demonstration that the new positions, at or near the top of the management hierarchy of the Operations Control Center, are concerned with overall system-wide control and direction, overseeing the continuing functions of those in the Train Dispatcher Group. The Carrier contends that employees in the cited positions carry 'system level responsibilities for distribution of power and management of the Carrier's assets....'
>
> Further support for this view is found in the ICC Order on which the Organization relies. This refers to Chief Train Dispatcher and Assistant Chief Train Dispatcher being responsible for train movement 'on a division or other assigned territory.' The Carrier has demonstrated that the positions under review here have responsibilities not limited to 'a division or other assigned territory.' The Organization points out that on some smaller railroads, Chief Train Dispatchers are assigned to an entire system. Here, however, the divisional (i.e., less than system-wide) responsibility is and has been appropriate.
>
> There is, further, no showing by the Organization that the management level positions established at the centralized Operations Control Center have in any way vitiated the existing responsibilities and work assignments of the Train Dispatcher Group. Most significantly, direct supervision of the Train Dispatchers remains with the Chief Train Dispatchers.
>
> There is, in sum, no showing that management-level positions, established in relation to a system-wide operations center, fit the definitions of 'positions, the duties of which fall within the scope of the Train Dispatcher Group.' Thus, the claim that such positions should be classified within the Train Dispatcher Group must fall."

Carrier argues this issue was put to rest by Public Law Board No. 3829, and is now res judicata. The Organization responds that the earlier decision was an interpretation of the "37/79 Agreement," while the matter herein requires an interpretation of the CSX-ATDA Agreement, which was not raised

before or addressed by the Public Law Board. In this regard, we consider the Organization's argument more persuasive. The role of the Public Law Board was to consider the reclassification of the positions, which required it to examine the positions in their totality. The question before this Board, however, is whether or not one task of those positions is reserved to the employees working under the Agreement. To reach this conclusion, we have reviewed the extensive record in this case and find that the issue raised by the Organization herein had not been previously dealt with in the earlier proceedings.

The manner in which the Organization has framed the issue has narrowed the scope of review of this Board. In his December 2, 1988 letter to Senior Manager Labor Relations Arledge, ATDA President Irvin wrote:

> " . . . this is to advise that if compliance with the various Scope rules, i.e., all instructions concerning power distribution must be issued to mechanical and yard forces through covered Chief, Night Chief and/or Assistant Chief Dispatchers, is not forthcoming by January 1, 1989, we have no choice but to present time claims for violations occurring on and after that date.
>
> Other personnel may, of course, make determinations concerning the distribution of power, but the instructions must be issued by those covered by our Scope rules. Our position is supported by Third Division Awards 16556, 18568, 18589, 18942, 19083, 26137 and several Public Law Board Awards."

There is no record during the handling of this dispute of the Organization recanting the above position. While this is not specifically discussed in the Organization's Submission before this Board, there is no indication the Claim herein goes beyond the issuance of instructions to mechanical department and yard forces. This, in fact, is all that is mentioned in the Organization's Statement of Claim.

What the Agreement reserves to covered employees is the right "to supervise the handling of trains and the distribution of power and equipment incident thereto." From the Award of Public Law Board No. 3829, we conclude that right is limited to such work in connection with the movement of trains on a Division or other assigned territory.

We have difficulty comprehending why determinations concerning the distribution of power, made in a system-wide Control Center, is not the type of supervision reserved by the Scope Rule, but the issuance of instructions to carry out those determinations is reserved. The Rule refers generally to supervision, not specifically to communication. The Rule does not require Carrier to use Dispatchers as intermediaries for some tasks, and not for

others. The issuance of instructions is an essential part of supervision, and logically flows from the responsibility to make decisions.

The resolution of this dilemma lies in the arena where the supervision occurs. As noted by Carrier, the utilization of motive power is no longer simply a Divisional or territorial concern. Interdivisional trains will use a locomotive consist across the system, and power distribution decisions must take this into account. Thus, this work goes beyond the scope of dispatching, which is bound by Divisional or territorial boundaries. Such was the decision of Public Law Board No. 3829. When the decisions are made on a system-wide basis, as they are on this Carrier, Public Law Board No. 3829 concluded that they are not covered by the Scope Rule. Neither are the instructions which are issued to effectuate those decisions. We must conclude, therefore, that the Agreement has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.

LABOR MEMBER'S DISSENT
to
THIRD DIVISION AWARD NO. 29681, DOCKET TD-29352

Award No. 29681 denies the claim founded mainly on the premise that the locomotive power distribution decisions in dispute, are the type made on a system-wide basis and these decisions are "...no longer simply a Divisional or territorial concern." Therefore, the award finds, the duties in dispute exceed scope coverage. For the reasons set forth below, the Labor Member finds the rationale of the award deficient, as it not only ignores over twenty years of well establishes arbitral precedent, but, additionally it is clear the majority simply didn't understand the issue.

While it may be true that some of these decisions concern locomotive power consists that could eventually operate over the Carrier's entire system, the actual decision relating to the assignment of locomotives to a particular train must still occur on a "Division" or "other assigned territory" as those terms are used within the Scope-Rule. After all, the Carrier's system is made up of divisions or other types of assigned territory. It follows then, that because locomotive power assignment decisions directly affect the movement of trains, the decisions concerning locomotive power assignments are incidental to the handling of trains.

In resolving previous disputes relating to locomotive power assignments, this Board has dealt with virtually identical scope rules. Uniformly, the Board has held that locomotive assignments are incidental to the movement of trains, and, therefore, the issuance of those instructions accrue to the class and craft of train dispatcher by virtue of the Scope.

Third Division Award No. 18586

> "The message to run two units on train No. 663 and to run them through to Snyder is an order for the 'distribution of power and equipment' incidental to the supervision and handling of that train. All of this is work which belongs exclusively to train dispatchers under the Scope Rule." [emphasis added]

Third Division Award No. 18589

> "A trainmaster generally has the right to instruct the dispatcher with respect to the use of engine units, but the 'distribution of power and equipment', which is incidental to the handling of a train, belong exclusively to train dispatchers." [emphasis added]

Third Division Award No. 19083

> "The message is a 'distribution of power and equipment' incident to the supervision of the handling of trains. This work belongs exclusively to the Chief, Night Chief, and Assistant Chief Dispatcher under Article 1 - Scope Rule." [emphasis added]

Award Nos. 19 and 24 of Public Law Board 588 similarly held that the issuance of messages concerning the assignment of

locomotive power, which is incidental to the supervision of the handling of trains, by other than train dispatchers, violates the Scope.

In view of the precedent established by these awards, it is reasonable to conclude then, if a decision relating to locomotive power assignment involves a train to be operated over a division or other assigned territory, then the scope exclusively reserves to train dispatchers, the right to exercise "supervision" over the distribution of locomotives incident to that train's operation. Thus, supervision, pursuant to the Scope, is much more than a right which is simply perceived by the Employees.

The Award correctly recognizes that "The [Scope] Rule refers generally to supervision..." Also, the Award correctly observes that "The issuance of instructions is an essential part of supervision..." It would seem to reason then, that because the Scope requires train dispatcher employees to exercise "supervision", it also requires them to actually communicate those instructions. This reasoning is entirely consistent with ATDA President Irvin's December 2, 1988 letter. Yet, the majority admits its' confusion by stating;

> "We have difficulty comprehending why determinations concerning the distribution of power, made in a system-wide Control Center, is not the type of supervision reserved by the Scope Rule, but the issuance of instructions to carry out those determinations is reserved."

It is a basic tenet of the train dispatcher's Scope, established through many years of arbitral precedent, that while initial determinations concerning locomotive power assignments may be made by other than train dispatchers, those assignment instructions must be issued to employees empowered to carry them out by train dispatchers. In an effort to assure that the majority clearly understand this concept, this writer provided the Board with copies of many supporting awards. These were; Third Division Award Nos. 16556, 18568, 18589, 18942, 19083, and 26137. Also, provided in support were numerous Public Law Board decisions, including Award Nos. 7, 19, 20, 24, 29, 30, and 31 of PLB588, as well as Award No. 1 of PLB4218. Each of these awards uphold the theorem that once initial decisions concerning locomotive power assignments are made, the Scope requires those decisions be channeled through train dispatchers. It is difficult to comprehend, how, despite all of these awards in support of this doctrine, the majority would still have trouble understanding this aspect of the dispute.

Awards in contrast to those listed above were also provided to the Board. Award Nos. 1, 9, and 21 of PLB588 confirm that Scope compliance is achieved when initial decisions are made by supervisors, and following those instructions, train dispatchers implement them by directing those charged with carrying them out.

It appears at least, the majority's bewilderment is somewhat balanced within the award. Their perplexity is once again exposed by the broad statement "The [Scope] Rule does not require Carrier to use Dispatchers as intermediaries for some tasks, and not for others." Award No. 26137 directly contradicts this assertion holding that is, in fact, exactly what the Scope requires.

Third Division Award No. 26137

> "Whatever may be the Carrier's intent, the elimination of the 'Middle Man' in this instance is a violation of the Agreement."

The dispute resolved by Award 26137 involved similar issues relating to locomotive power assignments being made on a system-wide basis.

The decision rendered in PLB3829 revolved around the question of whether or not the Power Coordinators' positions "...fit the definitions of 'positions, the duties of which fall within the scope of the Train Dispatcher Group.'" Limited to that issue alone, PLB3829 held that they did not.

That issue is significantly different than the one presented to this Board in the "Statement of Claim".

> "(a) CSX Transportation, Inc. (Carrier) violated its Train Dispatchers' basic schedule agreement...when...it allowed non-agreement personnel ...to issue instructions direct to mechanical department and various yard forces concerning motive power to be assigned to trains..." [emphasis added]

The majority claimed they recognized the difference between the disputes.

> "...we have reviewed the extensive record in this case and find that the issue raised by the Organization herein had not been previously dealt with in earlier proceedings."

They proceeded, however, to resolved this dispute as though there were no differences.

> "...this work goes beyond the scope of dispatching, which is bound by Divisional or territorial boundaries. Such was the decision of Public Law Board No. 3829. When decisions are made on a system-wide basis, as they are on this Carrier, Public Law Board No. 3829 concluded that they are not covered by the Scope Rule." [emphasis added]

Such overall inconsistency in reasoning is intolerable in this business.

I dissent to Award No. 29618. Its findings defy logic, lack sound reasoning, and disregard established precedent. Therefore, it is palpably erroneous, and useless as citation as precedent in the future. [Third Division Award Nos. 4516, 4770, and 6094]

L. A. Parmelee
Labor Member