

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30563
Docket No. TD-29152
94-3-90-3-1

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
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

- "(a) The Norfolk and Western Railway Company (hereinafter referred to as 'the Carrier') violated the current effective agreements between the Carrier and the American Train Dispatchers Association - (hereinafter referred to as 'the Organization') Article 1 (b) 2 and (c) of the August 1, 1951 Schedule Agreement and Supplement to that Agreement Article dated November 11, 1986.
- (b) Because of said violation the Carrier shall now compensate the senior available extra Train Dispatcher who is available in the Ft. Wayne, IN office at the starting time of each shift, one (1) day's pay at the rate applicable to Trick Train Dispatchers in such office beginning with the first shift on May 13, 1988 and continuing on each shift and date thereafter until the violation ceases.
- (c) In the event no qualified extra Train Dispatchers are available at the starting time of any of the respective shifts specified in paragraph (b) above, the claim is made on behalf of the senior qualified regularly assigned Train Dispatcher in the Ft. Wayne office who is available for such shift or shifts.
- (d) The identities of individual claimants who may be entitled to the compensation claimed herein are readily ascertainable from the Carrier's records on a continuing basis, and shall be determined by a joint check thereof in order to avoid the necessity of presenting a multiplicity of daily claims.

[Note: The claim shall be allowed as presented because it was not disallowed by Chief Dispatcher R. L. Rose in accordance with paragraph (a) of the July 8, 1976 claims and grievances procedures agreement.]"

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 were given due notice of hearing thereon.

In addition to the merits of the dispute, the Organization presents a procedural argument. It contends that the Carrier's initial answer to the claim did not satisfy the requirements of Paragraph (a) of the July 8, 1976 Letter of Agreement. It is the opinion of the Board that there is no merit to the Organization's contention that the claim should be allowed on the basis of this procedural argument. The language of the denial was sufficient to satisfy the requirements of the Rule.

Regarding the merits of the dispute, the thrust of the Organization's case is that Bulletin No. 38 caused a transfer of work from the Dispatcher to the Operator in question. After a careful consideration of the record, we are not convinced that any transfer of work occurred. It is our conclusion that the territory between Van Loon and 80th Street historically (for all practical purposes) has been handled through the Operator at the Cummings draw bridge. Any changes in procedure as a result of Bulletin No. 38 did not transfer Dispatcher work or in any other material way infringe on their Scope Rule.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.

Labor Member's Dissent
to
Award No. 30563, Docket TD-29152

Referee Vernon

Award 30563, which disposes of this dispute, states that the Board is not convinced that any transfer of work occurred. Further, the Board findings allege "...that the territory between Van Loon and 80th Street historically (for all practical purposes) has been handled through the Operator at the Cummings draw bridge."

Unfortunately, the majority decision is based on a misunderstanding of the facts surrounding this dispute. Contrary to the findings of the Award, this dispute involves two distinct, readily identifiable sections of track which, according to the record, have somewhat different histories of prior control.

To examine this issue it is best to begin at the original claim itself. In that document the General Chairman stated;

"The Carrier, by Fort Wayne Division Operations Bulletin No. 38...has transferred responsibility for train and on-track equipment movements between Van Loon, Indiana MP 497.8 and 80th Street, Illinois MP 515.8...The carrier has also installed a Centralized Traffic Control machine at Cummings Drawbridge and given responsibility of train operation between 80th Street and 110th Street within Chicago Terminal to the Operator at Cummings Drawbridge."

Now, to this writers mind this statement initiated two separate and distinct aspects of our complaint. First, the Cummings Drawbridge operator exercising control over the movement of trains between Van Loon and 80th Street, and second, the actual operation of the newly installed Centralized Traffic Control machine by the operator for the territory between 80th Street and 110th Street.

There is in place on this property a November 11, 1986, Memorandum Agreement which effectively altered the existing Scope Rule to the extent that, on the date of the agreement, all work then being performed by Train Dispatcher positions became, by virtue of the Agreement, work function exclusively accruing to those positions. According to the Memorandum Agreement, work that attaches to positions covered by the Scope may not later be removed.

When the Scope rule was amended on November 11, 1986 "...to encompass 'positions and work' that had the effect of 'freezing' the...work to the covered employees." See Award No. 120 of PLB 2668 on this property.

In the instant dispute, the employees established through probative evidence that on the effective date of the Agreement, Train Dispatchers exercised control over movements between Van Loon, Indiana (MP 497.8) and State Line, Indiana (MP 504.7). This evidence (unrefuted statements from dispatchers) prove that the train dispatchers were also controlling territory where traffic control machines were used. The 11/11/86 Agreement specifically reserved to train dispatchers, "...those duties of dispatching trains enumerated in existing schedule agreements, which by custom, practice or agreement have been accepted as train dispatching work."

Thus, it was a violation of the scope when the Carrier removed the work of controlling the movement of trains between Van Loon and State Line from the purview of train dispatchers and allowed other employees to perform that work. Also, the agreement provides that where traffic control machines are operated by other employees (as herein)

"...primary responsibility for the movement of trains shall continue to be under the supervision of the train dispatchers." This section of the 11/11/86 Agreement prohibited the Carrier from allowing the Cummings Drawbridge operator from operating the TC machine unless primary responsibility for the movement of trains remained with the train dispatchers. This, the Carrier did not do.

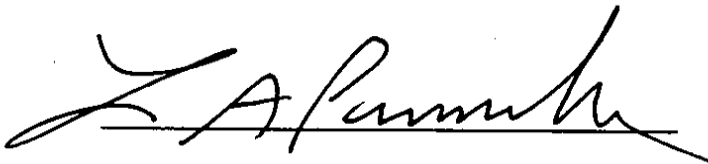
Similar types of Scope Rules covering other employees have often been examined by this Board. One award that is often quoted is Third Division Award No. 21933;

"Under the cited 'positions or work' scope rule, all work performed under the agreement is preserved to the organization until it is negotiated out. See Award 21382..."

No agreement was reached between the General Chairman and the Assistant Vice President Labor Relations to remove control of the territory between Van Loon and State Line from the train dispatchers. Therefore, in accordance with the many Third Division Awards on this subject all work being performed by train dispatchers is preserved to the organization members until it is negotiated out.

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Finally, this was a fairly complex case. The territory involved was a mixed bag of former railroad properties with considerably different backgrounds. The Scope Rule, as amended, specifically prohibited the Carrier's action. Had the majority bothered to give this case something more than the cursory one paragraph brush-off it received, that would have been obvious.

A handwritten signature in cursive script, appearing to read 'L. A. Parmelee', written over a horizontal line.

L. A. Parmelee, Labor Member

11/30/94