

Award No. 9825
Docket No. TD-9193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY COMPANY

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

(a) The Southern Railway Company, hereinafter referred to as the "Carrier", violated Article 1 (b) 2 of the currently effective Agreement between the parties when, on November 29, 1955, it permitted persons, not subject to the train dispatchers Agreement, to, by the use of two-way radios, direct the movement of trains on the Charlotte Division involving the operation of passenger train No. 48 on the reverse track (against the current of traffic) between Flowery Branch and Chicopee, Georgia, without authority or direction by the train dispatcher on duty in the Greenville, South Carolina train dispatching office of the Carrier.

(b) The Carrier shall now compensate the train dispatcher in the Greenville, South Carolina dispatching office who was charged with and entitled to the responsibility for the movement of trains by train orders, or otherwise, as defined in Article 1 (b) 2 and the operating rules of the Carrier, one minimum day's pay at train dispatcher rate for service performed on November 29, 1955, by persons not subject to the train dispatchers Agreement.

(c) A joint check of the Carrier's time rolls (pay rolls) shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine the name of the train dispatcher, or train dispatchers, entitled to the payment required by paragraph (b) of this claim.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Southern Railway Company and its train dispatchers, represented by the American Train Dispatchers Association, effective September 1, 1949, and revisions thereof are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein. Said Agreement will hereinafter be referred to as the "Agreement."

Pertinent rules of the Agreement read as follows:

"ARTICLE 1

(a) Scope

patchers, and without the Dispatchers' Association ever heretofore having raised any question with respect to them. This fact is fully supported by affidavits attached to and made a part of the record in this case.

(4) Carrier's Operating Rules, while not involved, were complied with to the letter.

Under the circumstances, the Board should dismiss the claim for want of jurisdiction. However, in event it does not see fit to do so, it cannot do other than make a denial award.

All pertinent data used in this submission have been made known to employe representatives.

Carrier, not having seen the Association's submission, reserves the right, after doing so, to make appropriate response thereto.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: There is little dispute as to the basic facts of this case. Freight train No. 154 and passenger train No. 48 were scheduled to operate northward from Atlanta to Greenville, with Train No. 154 departing at 5:00 P. M. and Train No. 48 at 8:30 P. M. On November 29, 1955, at approximately 8:25 P. M. while en route to Greenville, Train No. 154 stopped just north of the crossover between the north and southbound mains at Flowery Branch (M.P. 594.1) to give attention to the brakes on a car which were not releasing and was slowing the train's movement. Realizing that delay would be incurred and that Train No. 48 would be due shortly, the flagman from Train No. 154 was sent back a sufficient distance to provide flag protection for the rear of his train, in accordance with Operating Rule 99, to flag Train No. 48, and to instruct the crew on that train to run around Train No. 154 by using the southbound main between the crossover at Flowery Branch and the crossover at Chicopee (M.P. 587.4). Also following the Operating Rules, the engine of Train No. 154 was cut off and proceeded, on the northbound main, to the crossover at Chicopee and the head brakeman stationed himself on the southbound main, a sufficient distance north of the Chicopee crossover to flag any southbound trains that might approach.

While petitioner contends that a Trainmaster was on the caboose of Train No. 154 at Flowery Branch and contacted Train No. 48 by radio, the Carrier quotes a statement from the Trainmaster which indicates that by the time he arrived at Flowery Branch, Train No. 48 had already passed and the conductor on Train No. 154 told him what he had done.

From this situation the present claim was filed. The circumstances of this case are similar to those before this Board involving the same parties and the same language of the Agreement, which were disposed of in Award 9824. Our decision in this case must follow that precedent.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.