

Award No. 9826
Docket No. TD-9194

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 11, 1955, it permitted persons, not subject to the train dispatchers Agreement, to assume authority, by the use of two-way radio, to direct the movement of trains Extra 4223 North and No. 154 operating on the Charlotte Division of the Carrier without the direction of, and contrary to, instructions of the train dispatcher on duty at the dispatching office at Greenville, South Carolina, who was contractually entitled to be primarily responsible for the movement of trains by train orders, or otherwise, as provided in Article 1 (b-2).

(b) The Carrier shall now compensate the dispatcher in the Greenville, South Carolina train dispatchers' office who was contractually entitled to perform all train dispatching as defined in Article 1 (b-2) for a minimum day's pay at trick train dispatcher's rate for November 11, 1955, because of this unilateral transfer of work.

(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.

EMPLOYEES' 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 subsequent 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

The term 'train dispatcher', as hereinafter used, shall include night chief, assistant chief, trick, relief and extra dispatchers. It is

Under the circumstances, claim being barred should be dismissed by the Board for want of jurisdiction. However, in event the Board 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, as well as present any additional facts or evidence which to it may be necessary.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: This case involves the same parties, the same contract language, and a similar factual situation to those before us in Dockets TD-9192 and TD-9193. Train No. 154 was scheduled to operate northward from Greenville to Salisbury, South Carolina, leaving at 10:15 P. M. and arriving at 3:00 A. M. On November 10, 1955, Extra 4223 North, departed from Greenville holding train order No. 59 to run extra from Greenville to Salisbury. On the same date train order No. 64 was issued to Train No. 154, a copy of which was received by Extra 4223 North at Hayne (M.P. 454.3), instructing that Train No. 154 would be running one hour and thirty minutes late from Greenville to Air Line Junction, and one hour and ten minutes late from Air Line Junction to Salisbury.

While Extra 4223 North was at Gastonia (M.P. 399.2) setting off cars, information was received by radio that Train No. 154 was later than anticipated and the conductor on Extra 4223 North instructed his engineer to proceed to Air Line Junction. When Extra 4223 North was about three miles north of Gastonia, the fifteenth car from the caboose became uncoupled, thus delaying the train, and while the train was uncoupled flag protection was provided for the rear of the train in accordance with Operating Rule 99, and the train was otherwise protected in the rear by automatic block signals and the automatic train stop, also in accordance with Operating Rule 99.

From this incident the instant claim arose, alleging a violation of Article 1 (b) 2 of the parties' Rules Agreement of September 1, 1949.

Since this claim involves the same parties, the same contract language and a similar set of circumstances to those considered in Awards 9824 and 9825, it must be disposed of in the same manner.

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

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.