

Award No. 9827
Docket No. TD-9195

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 October 20, 1955, it permitted persons not subject to the train dispatchers Agreement to assume authority by the use of two-way radios to direct the movement of trains, involving the movement of Extra 4206 North operating on the schedule time of first class train No. 154 without authority or direction by the train dispatcher at Greenville, South Carolina, who, under the provisions of Article 1 (b-2) and the transportation rules of the Carrier, is entitled and required to be primarily responsible for the movement of trains by train orders, or otherwise.

(b) The Carrier shall now compensate the dispatcher in the Greenville, South Carolina office of the Carrier who was contractually entitled to direct all train movements on the Charlotte Division of the Carrier, including the movements directed by unauthorized employees as referred to in paragraph (a) of this claim, one minimum day's pay at trick train dispatcher rate of pay for October 20, 1955.

(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 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

Article 11 (b), and the Board has no jurisdiction and should dismiss it for want of jurisdiction.

(2) Paragraph 2 of Article 1 (b) of the effective Train Dispatchers' Agreement in evidence is not a classification of work rule, as alleged by the Association. Furthermore, even if it were such a rule, which it is not, the plain language used therein does not support any of the Association's contentions.

(3) Train movements of the type here involved have been made from time immemorial without authorization of trick train dispatchers and without the Dispatchers' Association ever heretofore having raised any question with respect to such operations. This fact is fully supported by affidavits attached to and made a part of the record in this case.

(4) Movement of train extra 4206 North on the date here involved was fully authorized by Carrier's Operating Rules and instructions, but even if it had not been so authorized, the movement was sanctioned by the management.

(5) Use of radio or telephone enabling the conductor on train extra 4206 North to obtain information as to the movement of train No. 154, and thus be able to keep train extra 4206 North in the clear of train 154, at all times, did not violate any provision of the Train Dispatchers' Agreement. Furthermore, no monopolistic rights to communicate by telephone, radio, or otherwise, have been conferred upon train dispatchers or others. Moreover, the Board is without any authority whatsoever to make an award restricting use by the Carrier of radio or telephone.

(6) No provision contained in the Train Dispatchers' Agreement here in evidence conferred upon train dispatchers the right to question movement of train extra 4206 North or any other train. It is management's function to operate trains and prescribe the manner in which they will be operated. The Association has no voice in the matter.

While the Board should dismiss the claim for want of jurisdiction, in event it elects not to do so, it cannot do other than make a denial award, in event it accepts jurisdiction.

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 and present any additional facts or evidence which to it may be necessary.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The basic facts of this case are not in dispute. And they are quite comparable to those before us in previous cases, involving the same parties.

Train No. 154 was scheduled to operate northward from Greenville to Salisbury, South Carolina, leaving at 10:25 P.M. and arriving at 3:00 A.M. On October 19, 1955, Extra 4206 North was en route from Greenville to Salisbury, when, upon reaching Gastonia (M.P. 399.2) at 1:36 A.M., a copy of train order No. 70 was received. This order instructed that Train No. 154

was running fifty minutes late from Greenville to Rocky Ridge and forty minutes late from Rocky Ridge to Salisbury. The conductor of Extra 4206 North learned by wayside telephone at Kings Mountain, or by radio, that Train No. 154 was further delayed. From this he realized that his train would have sufficient time to reach Air Line Junction ahead of Train No. 154. With this information the conductor directed the engineer of his train to run to Air Line Junction, at which point Train No. 154 would be cleared. The movement of both trains was protected by automatic block signals, the automatic stop system, and as required by Operating Rule 99.

Since the basic problem in this case is much the same as in those cases considered by us today, involving the same parties, our decision here must be the same. See Awards 9824, 9825, and 9826.

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 Employee involved in this dispute are respectively Carrier and Employee 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.