Award No. 9828
Docket No. TD-9196

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 12, 1955, it permitted persons not subject to the train dispatchers Agreement, by use of two-way radio, to assume the authority to be primarily responsible for the movement of trains on main track territory of the Carrier without authority of the train dispatcher on duty in the Carrier's dispatching office at Greenville, South Carolina, who, under the provisions of Article 1 (b-2), is primarily responsible for the movement of trains by train orders, or otherwise.

(b) The Carrier shall now compensate the train dispatcher who was contractually entitled and authorized to perform all train dispatching as outlined in the Carrier's transportation rules, and as defined in Article 1 (b-2) of the Agreement, one minimum day's pay at train dispatcher rate of pay for November 12, 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

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

CONCLUSION

Carrier has shown that:

(1) Claim which the Association is here attempting to assert is not properly before the Board, is barred, and the Board has no jurisdiction over it, and should, therefore, dismiss it for want of jurisdiction.

(2) Paragraph 2 of Article 1 (b) of the effective Agreement in evidence is not a classification of work rule, as the Association alleges. Furthermore, even if it were such a rule, which it is not, the language therein does not support the Association's contention.

(3) Train movements of the type here involved have been made from time immemorial without the knowledge or 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) The movement in question was fully authorized by the Carrier's Operating Rules; but even if it had not been so authorized, it was sanctioned by the Management. It was good railroading.

(5) Use of the radio by the Engineer on Train No. 154 in communicating with the Yardmaster at Greenville did not violate any provision of the Train Dispatchers' Agreement. No monopolistic rights to communicate by telephone, radio, or otherwise, are conferred upon Train Dispatchers by the terms of the Agreement here in evidence. The Board is without any authority whatsoever to make an award restricting use of radio by the Carrier.

(6) It is Management's function to operate trains. Nothing in the Train Dispatchers' Agreement confers upon them the right to question such operations. It is not a matter over which they have jurisdiction by agreement or otherwise.

Under the circumstances, the Board should dismiss the claim for want of jurisdiction, but 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 and present any additional facts or evidence which to it may be necessary.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties are not in agreement as to all of the pertinent facts in this case. However, from the record the following points are evident. Freight Train No. 154 and passenger Train No. 48 were scheduled to operate northward from Atlanta with No. 154 departing at 5:00 P. M., and No. 48 at 8:30 P. M. On November 12, 1955, at 4:20 P. M., train order No. 42 was issued to Train No. 154, instructing it to clear No. 48 on time. Train

No. 154 left Atlanta at 7:20 P. M. and Train No. 48 at 8:50 P. M., twenty minutes late.

At 8:52 P. M. train order No. 48 was issued to Trains No. 154 and 48, advising that Train No. 48 was running fifteen minutes late, Red Lane to Greenville. This order was delivered to these trains as they passed Greenville, No. 154 at 9:06 P. M. and Train No. 48 at 10:00 P. M.

At Norris, 22.5 miles south of Greenville, is located the last northbound siding south of Greenville and this side track has a capacity of only 168 cars. With 166 cars, plus the diesel units and caboose, the conductor of Train No. 154 realized that the siding was not long enough for complete clearance to allow Train No. 48 to pass without delay. After conferring with the engineer of Train No. 154, by radio, the conductor and engineer agreed that because of the heavy tonnage (with 133 loads and only 33 empties) and the grade condition at Norris, they would run ahead of Train No. 48 into Greenville, and thus avoid further delay to Train No. 48 at Norris. The engineer then communicated with the Yardmaster at Greenville, by radio, and informed him that Train No. 154 was coming into Greenville ahead of No. 48. The Yardmaster so informed the Chief Dispatcher and made arrangements to have the crossover switches lined for the yard movement. Train No. 154 was protected in the rear by automatic block signals, automatic train stop system, and as specified in Operating Rule 99. Train No. 48 overtook No. 154 as it was pulling into the yard at Greenville.

Had the conductor and engineer of No. 154 not decided to do as they did and clear No. 48 at Norris, because of the overall length of their train, they would have had to hold the main line at Norris and flag No. 48 through the siding. To do this they would first have had to pull in the clear, let No. 48 in the siding and then back down the main track so that No. 48 could reach the main line at the opposite end of the siding.

The Organization contends that the Road Foreman of Engines was riding Train No. 48 and that he called Train No. 154 by radio, informing No. 154 of the location of No. 48. But the Carrier contends that no such conversation was carried on between the two trains.

This case will be decided in the same way as previous cases involving the same parties, the same contract language and similar factual situations. See Awards 9824, 9825, 9826, and 9827.

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.