

Award No. 9846
Docket No. TD-8460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Southern Pacific Company (Pacific Lines), hereinafter referred to as "the Carrier," violated the currently effective agreement between the parties to this dispute, particularly Article 1, Sections (a) and (c), Article 4, Section (d), Article 5, Section (k) and Article 7, Section (b), of the current agreement when on May 2, 3, 4, 5, 6, 9, 10 and 11, 1955, it permitted and required Trainmaster W. B. Knight, an employe not covered by that agreement, to be primarily responsible for the movement of trains hereinafter specifically set forth, on its westward main track between the stations of Rye Patch, Nevada, and Imlay, Nevada, on the dates set forth above.

(b) Carrier shall now compensate Extra Train Dispatcher F. W. Price, an available and qualified extra train dispatcher, holding train dispatcher's seniority on the Salt Lake Division, one day's pay at trick train dispatchers pro rata rate for each of the dates specified in paragraph (a) hereof, dates upon which he was deprived of train dispatching work to which he was contractually entitled under the provisions of the agreement, but which train dispatching work was performed by Trainmaster W. B. Knight, an officer of the company, who does not hold seniority as train dispatcher.

EMPLOYEES' STATEMENT OF FACTS: There exists an agreement between the parties to this dispute effective April 1, 1947, reprinted July 1, 1955, on file with your Honorable Board and by this reference made a part of this submission as though it were fully set out herein. Articles 1, Sections (a) and (c), Article 4, Section (d), Article 5, Section (k) and Article 7, Section (b), which are particularly pertinent to the instant claim were not changed by the reprint of the agreement July 1, 1955, and are here quoted for ready reference:

"ARTICLE 1—

Section (a). SCOPE. This agreement shall govern the hours of service and working conditions of train dispatchers:

This class shall include chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually

CONCLUSION: The carrier asserts that the claim in this docket is without basis or merit and, therefore, respectfully requests that the claim be denied.

All data submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserved the right, if and when it is furnished with submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims that may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The Record herein discloses that the Trainmaster exercised primary responsibility for the movement of trains between Rye Patch and Imlay on the dates in question contrary to the intent of Article 1 (c) of the Parties' Agreement and to the September 13, 1937 Memorandum of Understanding between the Parties. An affirmative award here is also required by Awards 6885, 7575 and 7576. Those awards are clear precedents involving the same Parties, rules and issues involved herein and no sufficient distinctions exist between the cases covered by those awards and the present case to justify other than a sustaining award here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 27th day of February 1961.

DISSENT TO AWARD 9846, DOCKET TD-8460

The majority in its award overlook the fact that the Trainmaster activity complained of was specified in a Train Order issued by the Dispatcher at Sparks and that by issuing the Train Order he retained primary responsibility for the movement of trains. The Trainmaster's activity found by the majority to violate the Dispatcher's Scope Rule amounted to no more than implementing the Dispatcher's Train Order so as to insure safe train operation.

The record shows the Trainmaster telephoned the Dispatcher at Sparks when it was necessary to operate an eastbound train against the westbound current of traffic, thus the control of train movements was still lodged with an employe covered by the Dispatcher's Agreement.

All the Trainmaster did here was issue necessary instructions to employes subject to his jurisdiction relative to a Train Order issued by the Train Dispatcher.

For these reasons we dissent to the majority's decision.

/s/ **D. S. Dugan**

/s/ **R. A. Carroll**

/s/ **P. C. Carter**

/s/ **W. H. Castle**

/s/ **J. F. Mullen**