

Award No. 13650
Docket No. TD-14807

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier"), violated, and continues to violate, the existing schedule agreement between the parties, Part 1, Scope, thereof in particular, by its action, effective June 28, 1961, and since, in requiring and permitting employees not within the scope of the said schedule agreement to perform work covered thereby.

(b) The Carrier shall now be required to terminate the delegation of work referred to in paragraph (a) hereof and restore the same to employees within the scope of the said schedule agreement.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with your Honorable Board, and the same is made a part of this Submission as though fully set out herein.

The Scope Rule of Part I of the Agreement, applicable to train dispatchers, is here quoted in full for ready reference:

"The provisions set forth in Part I of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company and its Train Dispatchers, represented by the American Train Dispatchers Association, and shall govern the hours of service, working conditions, and rates of pay of the respective positions and employees classified herein.

The term 'Train Dispatchers' as used in Part I of this Agreement shall include trick, relief and extra Train Dispatchers.

When remote control or traffic control machines are operated by employees other than Train Dispatchers, a Train Dispatcher at the dispatching headquarters shall exercise direct supervision over the employees operating such machines.

3. The Employees have failed to produce any valid evidence whatsoever to the contrary.

4. The Board already has rendered a decision in a similar dispute on this property.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

It has been shown that no work was performed by Employees other than Train Dispatchers to which Train Dispatchers have established any right and that the Scope of the Rules Agreement was not violated.

Therefore, the Carrier respectfully submits your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The issues of fact and law presented in this case are the same as those presented in Award 13649, and the conclusions of fact and law are the same.

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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1965.

**LABOR MEMBER'S DISSENT TO AWARD 13650,
DOCKET TD-14807**

The holding of the majority in Docket TD-14807, Award 13650, dissented to for the reasons set out in Dissent to Docket TD-14806, Award 13649.

R. H. Hack
Labor Member

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD 13650, DOCKET TD-14807**

(Referee Hutchins)

The Carrier Members' answer to Labor Member's Dissent to Award 11239 is incorporated herein as our answer in this case also.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts