Award No. 14947
Docket No. TD-16021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter referred to as "the Carrier"), violated the Agreement between the parties, Article 1 thereof in particular, when it required or permitted an officer of the Carrier to assume and perform work within the scope of the Agreement on March 18, 1965.

(b) Carrier now be required to compensate Extra Train Dispatcher J. F. Moore one day's pay at pro rata rate of trick train dispatcher because of said violation.

EMPLOYES' STATEMENT OF FACTS: On the date here involved, March 18, 1965, there was an Agreement in effect between the parties, effective September 1, 1949, revised January 1, 1953, copy of which is on file with this Board. That Agreement is incorporated herein as though fully set out. (The Agreement was also revised, effective October 1, 1965, wherein the rules herein involved are identical to those in the 1953 revision in effect at the time the instant dispute arose.)

For ready reference, Article I, the Scope Rule of the Agreement, is here quoted in full:

"ARTICLE I.

(a) Scope.

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement.

NOTE (1): Positions of excepted chief dispatcher will be filled by employes holding seniority under this agreement.

This dispute having been handled in the usual manner, up to and including Carrier's highest designated officer, and having been declined by him, the claim is properly before this Board for adjudication.

All statements and data herein contained have been the subject of discussion and/or correspondence between the parties, or are known and available to the Carrier, and are made a part of this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: A part of the Carrier's Eastern Operating Division extends in a northeasterly direction from Springfield, Missouri to St. Louis, Missouri. This portion of such division is composed of two operating subdivisions, namely, the Lebanon Subdvision and the Rolla Subdivision.

The Lebanon Subdivision extends in a northeasterly direction from Springfield to Newburg, Missouri. The Lebanon Subdivision connects with the Rolla Subdivision at Newburg, and the latter extends northeastwardly from that point to St. Louis.

A major portion of the above-mentioned subdivisions is under a system of centralized traffic control, known in the railroad industry as "CTC". Such CTC system is operated by train dispatchers located in the train dispatching office at Springfield.

At or about noon time on March 18, 1965, Train No. 39 was involved in a derailment at a point approximately halfway between Newburg and St. Louis. The derailment blocked the main line and caused delays to Trains Nos. 30, Advance 30, 9, 37 and the local.

Train Dispatcher C. W. Roberts was on duty and regularly assigned to the position responsible for the movement of trains over the territory where the derailment occurred.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that Carrier violated the Scope Rule contained in the Agreement between the parties on the date of claim by allowing an official of Carrier to operate the control panel for CTC on Carrier's Rolla Subdivision, following a train derailment between Newburg and St. Louis, Missouri.

Petitioner asserts that Carrier required or permitted said official to assume control of and operate the control panel governing train movements on the Rolla Subdivision from about 3:00 P. M. until almost 9:00 P. M. on the claim date, instead of calling the Claimant, an extra train dispatcher, to man the control panel and assist in handling the added work load resulting from the congestion of train movements subsequent to the derailment. Petitioner offered in evidence the statement of the regularly assigned Train Dispatcher on duty between 3:30 P. M. until 9:00 P. M. on March 18, 1965 (Exhibit TD-3), which in part reads as follows:

> "When I walked into the dispatching office on this date about 3:30 P. M., Mr. T. M. Galloway was standing in front of this ma-

chine and operating it. There was a derailment at St. Clair, and the wrecker was at this location. Mr. Galloway told me what he was going to do and took over the handling of the machine until 8:50 P. M. I did little or no handling on the Rolla Subdivision from the time I went to work until he left at about 9:00 P. M."

Carrier denies that the Assistant General Superintendent–Transportation took over the operation of the CTC machine as alleged and asserts that the on-duty Train Dispatcher had control of the machine during his entire tour of duty. Carrier offered in evidence a statement of the Assistant General Superintendent–Transportation (Carrier's Exhibit B), which, in part, reads as follows:

"I did not take over operation of CTC machine on Rolla Subdivision between 3:00 P. M. and 9:00 P. M. Mr. C. W. Roberts had control of machine during entire time on duty."

Thus, we are confronted with two conflicting versions of material facts, and Petitioner has not offered any further evidence of a probative value to support its contention that Carrier's officer actually assumed control and operated the control panel governing train movements on the Carrier's Rolla Subdivision. The patent conflict in the evidence requires a determination of facts that is essential to the proper disposition of this dispute, and this Board cannot settle such questions of disputed facts. The substantive issue of whether the Agreement was violated cannot be reached, as we have no alternative but to dismiss the Claim. Awards 12789 and 13119.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1966.

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