

Award No. 16038
Docket No. TD-16517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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, Article 1, Section (c) and the agreed-upon interpretation thereof contained in Memorandum of Understanding dated September 13, 1937 in particular when, on February 18, 1965, it permitted and/or required an officer of the Carrier, an employee not within the scope of said Agreement, to assume primary responsibility for the movement of trains at Santa Susana, California on Carrier's Los Angeles Division.

(b) For the above violation, Carrier shall now be required to compensate Claimant B. J. Skipper one day's pay at trick train dispatcher rate of pay for February 18, 1965, a day upon which he was deprived of train dispatching work for which he was qualified and available and to which he was entitled under the provisions of the Agreement, but which work was performed by an employee of the Carrier not within the scope of said Agreement.

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

For ready reference, Article 1, Section (c) of said Agreement is here quoted in full:

"ARTICLE 1.

SECTION (c). Definition of Trick Train Dispatchers' Positions. The above class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work."

and further investigation, again wrote Carrier's Assistant Manager of Personnel on January 11, 1966 (Carrier's Exhibit F). By letter dated February 16, 1966, Carrier's Assistant Manager of Personnel denied the claim — see Carrier's Exhibit G.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts involved are not in issue. On February 18, 1965 Carrier's Work Extra 5270, equipped with a Speno Rail Grinder, held work train authority to work on Carrier's main track between Chatsworth and Santa Susana. The train orders issued to said train required protection against certain trains but did not confer authority to occupy Carrier's main track at either Chatsworth or Santa Susana, intermediate points on the Santa Barbara Subdivision of Carrier's Los Angeles Division. The record reflects that Work Extra 5270 arrived at Santa Susana on the claim date before certain trains from which it was protected by train order. The Assistant Trainmaster in charge of the rail grinding operation communicated with the crews of Trains First 831 and Second 831 by radio, informing each that the rail grinder was occupying the main track at Santa Susana and that said trains were to run through the siding at that location. Petitioner contends that Carrier violated the Scope Rule of the Agreement between the parties, specifically Article 1, Section (c), as well as the Memorandum of Understanding dated September 13, 1937 with respect to the application of Article 1 (c) which provide as follows:

"ARTICLE 1.

SECTION (c). Definition of Trick Train Dispatchers' Positions. The above class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work."

"MEMORANDUM OF UNDERSTANDING

In connection with the provisions of Article 1 (c), Train Dispatchers' Agreement reading:

'DEFINITION OF TRICK TRAIN DISPATCHERS' POSITIONS.

'The above class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces in handling train orders; to keep necessary records incident thereto; and to perform related work.'

It is understood that the basic principle involved, in determining the classification of a position as that of train dispatcher, is whether or not the incumbent is 'primarily responsible for the movement of trains' regardless of the method employed; example, an employe who handles any form of mechanical device controlling the movement of trains, under the direction of the train dispatcher covering individual moves, is not primarily responsible for the movement of trains, and

therefore is not a train dispatcher; on the other hand if such movements over main line territory between stations are made independent of and without instructions from the train dispatcher, the operator of such devices or methods, is primarily responsible for the movement of trains, and comes under the 'train dispatcher' classification. It is understood that, yard and terminal movements controlled by towers, do not fall within the Train Dispatcher classification."

Carrier avers that Article 1 (c) is a classification ruling only and does not reserve work exclusively to trick train dispatchers as alleged by Petitioner. However, the Memorandum of Understanding further defines the position of trick dispatcher and must be considered together with the applicable language of the general Agreement. Consequently, it is apparent that the controlling language is specific and not general in nature as alleged by Carrier.

Carrier further contends that the Assistant Trainmaster merely permitted his work train to continue working at a station with flagging protection, which happened to include a movement of trains through a siding while such work was in process. The clear implication of Carrier's contention is that the Assistant Trainmaster became a "flagman" for the work train and performed no work of a train dispatcher. Under similar circumstances, this Board has held on previous occasions that regardless of Carrier's description of the Assistant Trainmaster's functions as a member of the work train crew, he still was primarily responsible for the train movement. Awards 7575 and 7576.

Carrier also contends that the language of the Memorandum of Understanding applies only to the movement of trains between stations, and by implication, excludes movements at a single station such as allegedly is found in the instant case.

The record reflects that the work train was located at Santa Susana when the disputed movement occurred over a siding pursuant to the instructions of the Assistant Trainmaster transmitted by radio. Both Santa Susana and Chatsworth are simply described as intermediate points on Carrier's main track between which Carrier's Work Extra 5270 was assigned to rail grinding on February 18, 1965. Santa Susana is not within yard limits. Furthermore, the territory between Santa Susana and Chatsworth is single main track upon which trains are operated by time table and train order, and the train order office at Santa Susana was open.

In view of the foregoing, we find Carrier's alleged distinction without merit, particularly as the disputed movement on a siding involved the movement of trains on Carrier's main line between stations operated by train orders, and not the movement of the work train. Accordingly, we find that a violation of Article 1, Section (c) occurred as the disputed movement was clearly within the purview of the Memorandum of Understanding. Awards 7575 and 7576.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16038, DOCKET TD-16517 (Referee Ives)

As clearly stated by Carrier in Item 3 of its Statement of Facts:

"Assistant Trainmaster M. L. Park contacted the dispatcher and advised him that he would put out flagmen to protect against both east and west bound trains."

The foregoing was fully supported by personally signed statement from Assistant Trainmaster Park which was included as Carrier's Exhibit A-1 and which was made known to Petitioner during handling on the property as evidenced by Carrier's Exhibit G.

This important point was stressed again on page 5 of Carrier's initial submission as follows (page 26 of the record):

"An examination of train orders issued by train dispatcher included at page 2 of letter from Petitioner's Office Chairman appealing this claim (Carrier's Exhibit C) will reveal that those orders did not provide authority for Engine 5270 to work extra west of the east switch at Santa Susana, and on arrival at the east switch at Santa Susana **flag protection was afforded by members of the crew** protecting against trains in both directions, who then used **flag authority** to work between switches on the main track. Trains First and Second 831 were headed on the siding at Santa Susana by members of the crew account main track being occupied.

All necessary authority for this handling was vested with the crew of Work Extra 5270 by rightfully utilizing flag protection with its own crew members, a right conferred upon them without need of dispatcher concurrence or train order authority and in strict accordance with Rules and Regulations of the Transportation Department. The assistant trainmaster's participation in the occurrence was simply the direction of work to be performed."

and on page 32 with the following:

"Awards 7575 and 7576 are clearly distinguishable on the facts. In both of those Awards, an Assistant Trainmaster personally flagged a train over the road from one station to another, whereas in the instant claim the crew members of Work Extra 5270 personally performed the flagging for moves all at Santa Susana."

Carrier reiterated the point in rebuttal argument as follows:

"Petitioner, from the outset of this dispute, has been consistently aware that flag authority as authorized under Carrier's Operating Rule 99 was used for Work Extra 5270 to occupy the main track at Santa Susana, February 18, 1965, and that such flag authority was provided by members of Work Extra 5270's own crew in order that the train could continue rail grinder operations on the main track. In spite of its awareness of this fact, Petitioner is conspicuously silent on this important point and dwells instead upon the erroneous assertion that Assistant Trainmaster Park assumed primary responsibility for train movements in violation of the current agreement by personally directing trains 1/831 and 2/831 through the siding at Santa Susana and that Work Extra 5270 was thus occupying the main track without authority."

In total disregard of the foregoing facts, the Award states:

"Carrier further contends that the Assistant Trainmaster merely permitted his work train to continue working at a station with flagging protection, which happened to include a movement of trains through a siding which such work was in process. The clear implication of Carrier's contention is that the Assistant Trainmaster became a 'flagman' for the work train and performed no work of a train dispatcher. Under similar circumstances, this Board has held on previous occasions that regardless of Carrier's description of the Assistant Trainmaster's functions as a member of the work train crew, he still was primarily responsible for the train movement. Awards 7575 and 7576."

Nowhere in Carrier's submission can it be found that Carrier contended or implied that the Assistant Trainmaster became a flagman for the work train or became a member of the work train crew. To the contrary, Carrier clearly established the fact that "... the crew members of Work Extra 5270 personally performed the flagging for moves all at Santa Susana" and that "Trains First and Second 831 were headed on the siding at Santa Susana by members of the crew. . . ."

The occurrence giving rise to the instant claim was not similar to Awards 7575 and 7576 as stated by the majority. In Award 7575 the Assistant Trainmaster there involved was the flagman and the Award went on to state it made him primarily responsible for the train movement. Award 7576 was similar to Award 7575. In the instant case members of the crew were the flagmen and the crew members themselves became responsible for the movements at Santa Susana. In this connection the majority further misstates the facts with the following:

"The record reflects that the work train was located at Santa Susana when the disputed movement occurred over a siding pursuant to the instructions of the Assistant Trainmaster transmitted by radio."

The movement of the trains through the siding at Santa Susana was **not** pursuant to the instructions of the Assistant Trainmaster transmitted by radio but rather, as Carrier's facts show, such move over the siding was under flag protection pursuant to Rule 99.

The sustaining Award is expressly predicated on a finding that the involved train movement did not take place within the station limits of Santa Susana but rather took place on line "between stations." The specific finding reads:

"... the disputed movement on a siding involved the movement of trains on Carrier's main line **between stations** . . ."

We find no evidence in the record to support this finding. Carrier has consistently contended that the siding on which this movement took place was entirely within station limits. Being both wrong in fact and entirely unsupported by evidence in the record, this finding exceeds the Board's jurisdiction and is invalid.

We dissent.

G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White

**LABOR MEMBERS' ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARD 16038, DOCKET TD 16517**

This dissent actually warrants no answer since it contradicts itself. Just a scanning of the Docket reveals the Carrier's Trainmaster ordered trains to use a siding and also move from point to point instead of complying with, then in effect, proper train orders and Carrier's own rules.

The Carrier and dissenters refer to Rule 99 as a flag protection rule **AND** that is all Rule 99 is, a protection rule, not a train movement rule. If this rule (99) is a train movement rule in its **BROADEST** sense, it is for **protection** from the rear of a train and the head end of a train, not to circumvent proper train orders issued by a train dispatcher working under a definite, specific scope rule.

The Carrier produced a letter that the Trainmaster via radio directed the movement of trains, which under the controlling agreement is train dispatcher's work.

The Carrier Member in panel was asked to produce evidence of what the so-called:

"Station limits"

are, and failed. The Carrier failed to produce what are:

"Station limits"

defined as, per Carrier rules.

The dissenters state the changing of the train movements was done by Rule 99. Anyone familiar with the Railroad Industry knows that this is not proper, and especially when an operator was on duty right at Santa Susana and the trains involved could have been properly handled by train orders.

The dissent is merely a distortion of facts. The majority, based upon a specific scope rule and past Board awards on this same Carrier, sustain the truth.

This Board never denied its jurisdiction and raising it in a dissent points to further childness this Board is burdened with by long-winded dissents of no value.

George P. Kasamis
Labor Member