

Award No. 16465
Docket No. TD-17065

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nathan Engelstein, 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) thereof in particular when, on November 1 and 2, 1965, it permitted and/or required Trainmaster D. R. Anderson, an officer of the Carrier and an employe not within the scope of said Agreement, to assume primary responsibility for the movement of trains on Carrier's Oregon Division.

(b) For the above violation, Carrier shall now be required to compensate Claimant W. W. Lowell for one day's pay for November 1, 1965, and Claimant R. Q. Burley for one day's pay for November 2, 1965, each at the pro rata rate of trick train dispatcher.

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

Attached hereto as Exhibit TD-1 is a copy of Memorandum of Understanding dated September 13, 1937, which contains an agreed-upon interpretation of Article 1, Section (c) of said Agreement and, for ready reference, Article 1, Section (c) is here quoted in its entirety:

"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."

On the claim dates here involved, Claimants W. W. Lowell and R. Q. Burley were train dispatchers assigned to service in Carrier's Eugene, Oregon train

were not required to receive a clearance at this station. Westward trains passing Grass Lake that messages were delivered to can be determined from the records of the Carrier.

The employees therefore submit that this claim is fully supported by the schedule agreement rules, the Memorandum of Understanding dated September 13, 1937 and by various awards of the National Railroad Adjustment Board in similar disputes."

By letter dated June 7, 1966 (Carrier's Exhibit E), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim in behalf of Train Dispatchers W. W. Lowell and R. Q. Burley for one day's pay each at pro rata rate on the grounds Trainmaster D. R. Anderson on November 1 and 2, 1965, arranged with the Telegrapher at Grass Lake to issue orders to westward trains restricting their speed between west switch Cougar and east switch Andesite. Organization takes the position that Carrier violated the Agreement, specifically Article 1, Section (c), when it permitted Mr. Anderson, not an employee covered by the scope of the Agreement, to assume primary responsibility for movement of trains.

Carrier denies the claim with the assertion that an emergency in the form of a forest fire justified Trainmaster Anderson handling the situation in the only manner available to him at the time. It also requests that the claim be dismissed because it is substantially different from that submitted on the property. On the property it maintains that the Organization did not argue that Dispatchers were not primarily responsible for train movements, whereas in the claim before this Board it contends that an employee not within the scope of the Agreement assumed primary responsibility for the movement of trains.

The claim on the property and the claim before this Board involve the issuance of instructions to trains and relate to the responsibility for movement of trains. Both claims are concerned with a violation of the Scope Rule, Article 1, Section (c). Since we find no substantial variance in the claim we hold that it is properly before this Board.

The record indicates that on November 1, 1965, a forest fire broke out adjacent to Carrier's right of way between Cougar and Andesite. It was an extensive fire and hazardous because of the changing direction of high winds and dry ground conditions. In order to safeguard the equipment and the people attempting to control the fire, it was essential to diminish the speed of trains in that area. Although the Organization recognizes that the fire necessitated instructions concerning track side conditions to the train crews approaching the area, it takes issue with the Carrier as to the manner in which Mr. Anderson chose to notify the westward trains of the conditions.

Under the emergency conditions we find that Mr. Anderson properly exercised what he regarded as sound judgment to safeguard personnel and equipment by giving his instructions to the Operator at Grass Lake to convey to the train crews. He handled the situation in the manner which seemed appropriate at the time. Considering the situation Carrier was justified in

permitting a Trainmaster not covered by the scope of the Agreement to assume primary responsibility for the movement of the trains. We hold that Agreement was not violated.

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 denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.