



Award No. 16525
Docket No. TD-17069

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 March 5, 1965, it permitted and/or required Yardmaster Whitley, an employe not within the scope of said Agreement, to issue information concerning train movements, work which has by history, tradition and custom been performed by train dispatchers.

(b) *For the above violation Carrier shall now be required to compensate Claimant Train Dispatcher R. M. Allen one day's pay at pro rata rate of trick train dispatcher.*

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

Attached hereto as Exhibit TD-1 is a copy of Memorandum of Understanding dated September 13, 1937 containing an agreed upon interpretation of Article 1, Section (c) of said Agreement and, for ready reference, Article 1, Section (c), 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."

On the claim date here involved, Claimant R. M. Allen was a train dispatcher assigned to Carrier's Eugene, Oregon train dispatching office, and was qualified for and available to perform any necessary train dispatching service.

Since the facts in this case do not establish that work reserved exclusively to members of your craft has been delegated to employees not covered by the current agreement, the claim is not supported by any agreement provision or other references cited by you, and it is denied."

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we are confronted with the contention of the Carrier that the claim as submitted to the Board is not the same as that submitted on appeal to the Carrier's highest officer and that there is a substantial variance between the claim as handled on the property and as submitted to the Board.

A review of the Record shows that the claim as handled on the property was an alleged violation of the Agreement because of " * * * the requiring, or permitting of yardmaster Whitley to issue lineups such as stated in the statement of facts * * *." In the claim submitted to the Board the Petitioner charges the Carrier with violating the Agreement "when, on March 5, 1965, it permitted and/or required Yardmaster Whitley, an employee not within the scope of said Agreement, to issue information concerning train movements, work which has by history, tradition and custom been performed by train dispatchers."

We agree with the argument by and in behalf of the Carrier that the claim submitted to the Board varies substantially from the claim as handled on the property. We have consistently held that where there is a substantial variance between the claim handled on the property, and that presented to the Board, we cannot resolve the dispute. Awards 15384, 14258, 13235. We will, accordingly, dismiss the claim.

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 claim shall be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.

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