



Award No. 16526

Docket No. TD-17070

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 April 5, 1965, it permitted and/or required person or persons not within the scope of said Agreement to assume primary responsibility for the movement of trains on the Willamina Branch, Oregon Division.

(b) For the above violation Carrier shall now be required to compensate Claimant Train Dispatcher L. W. Campbell one day's pay at 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 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 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 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 L. W. Campbell was a train dispatcher assigned to service in Carrier's Eugene, Oregon train dispatching office, was qualified for and available to perform any necessary train dispatching service.

that the party so doing is a third party primarily responsible for the movement of this train and is doing work that has been customarily, traditionally and historically done by train dispatchers."

and by letter dated June 7, 1966 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim, stating in part as follows:

"After further review of facts and contentions advanced in your letter and in conference, it is our position that the train crews in question were not limited by any provision of the current Train Dispatchers' Agreement from establishing radio contact between them to ascertain the information in question. We do not agree that the use of the radio was in lieu of train order authority since movements in McMinnville yard limits are authorized under Rule 93 of the Rules and Regulations of the Transportation Department and the crew on the train making the call did later operate in said yard limits on their own initiative in accordance with that operating rule."

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute herein involves the movement of trains within yard limits. On April 5, 1965, the conductor on one assignment identified as the "Willamina Turn," operating within McMinnville yard limits, established radio contact with the conductor on another assignment known as the "Northsider" to determine location of the latter as an incident to arranging their movements against each other within said yard limits. Movements within the yard limits are authorized under Rule 93 of the Rules and Regulations of the Transportation Department.

The Petitioner contends that the crew of the "Willamina Turn" moved its train over the main track within yard limits on the strength of information obtained from the conductor of the "Northsider," that such radio information from the conductor of the "Northsider" was in effect a train order which enabled them to move, and that such procedure by the train crew constituted a violation of the Train Dispatchers' Agreement.

The Carrier denies that the train crews moved on the strength of the radio information, denies that the radio information was in effect a "train order" and denies that the procedure followed by the two train crews in this case constituted a violation of the Dispatchers' Agreement.

In Award 6885, involving the same parties, this Board held in part:

"The principal contention advanced by the Organization in support of its position is that under Section (c) supra, all train movement work belongs to Train Dispatchers. Heretofore we have disposed of this contention contrary to the Association's position by stating we adhere to the established and traditional rule that switching and train crews can move and operate engines and trains within properly designated yard limits without instructions from Train Dispatchers under operating rules such as are here involved, hence it requires no further discussion."

In the handling of the present dispute on the property, the Carrier insisted that the train crews moved of their own initiative in accordance with

Operating Rule 93. In its submission to this Board the Carrier maintains that position.

We do not construe the radio communication between the two crews as constituting a "train order." The use of the radio by the train crews was not in violation of the Dispatchers' Agreement. The Petitioner has not proved that movements here involved were not made in accordance with Operating Rule 93. On the basis of Award 6885 the claim herein must be denied.

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 26th day of July 1968.