



Award Number 17764

Docket Number TD-18238

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

- (a) The Chicago, Burlington and Quincy Railroad Company (hereinafter "the Carrier") violated the currently effective Agreement between the parties Article 1(d) thereof in particular, when, on January 20, 1968, it required and/or permitted an employe not within the scope of the Agreement to perform work covered thereby.
- (b) Because of said violation Carrier shall compensate Extra Train Dispatcher R. J. Jore one day's compensation at pro rata rate applicable to 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. By this reference the said Agreement is incorporated into and made a part hereof, as though fully set out.

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

"(a) SCOPE.

This agreement shall govern the hours of service and working conditions of train dispatchers.

The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to a shift performing train dispatchers' work.

NOTE: A weekly rest day shall be assigned to each excepted chief train dispatcher position as a part of the weekly schedule of work for any train dispatcher assignment.

Relief of excepted chief train dispatchers for their annual vacation, and other temporary periods of absence from their positions, shall be made by qualified train dispatchers from the office involved.

Any permanent appointment to the position of excepted chief train dispatcher shall be made from train

OPINION OF BOARD: This claim arises from an instance when an employe not covered by the Agreement allegedly performed work covered thereby. There is no dispute as to the facts giving rise to the claim. On January 20, 1968, a telegrapher, without knowledge or authority of a train dispatcher, assumed the responsibility for movement of a train.

The pertinent portion of the Agreement is as follows:

"ARTICLE 1

(a) SCOPE

This agreement shall govern the hours of service and working conditions of train dispatchers.

The term "train dispatchers" as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to a shift performing train dispatcher's work.

.....

"(c) DEFINITION OF TRICK TRAIN DISPATCHER POSITIONS.

Trick train dispatchers' positions shall include 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. It is understood that this definition does not preclude the handling of train orders or performance of work defined as that of trick train dispatcher by chief or assistant chief train dispatchers."

It is the contention of the Organization that extra train dispatcher R. J. Jore be compensated one day's pay for this violation.

It is the contention of the Carrier that the Agreement does not vest the Organization with exclusive responsibility for train movement in the instant situation. It is their contention that prior to the movement of the train in question, the telegrapher made efforts for 20 minutes to obtain authority for such movement from the dispatcher then on duty and assigned the responsibility for train movement. That having failed to make contact with the train dispatcher that an emergency existed and that the telegrapher was at liberty to act in the emergency situation.

We conclude from the terms of the Agreement and the facts before the Board that the work in question was covered by the Agreement and that no emergency existed so as to justify the performance of such work by the telegrapher on the occasion in question.

We now turn to the question of compensation. There has been no showing of an actual monetary loss on the part of the Claimant herein. Both the Carrier and the Organization have cited substantial numbers of opinions of this Board in support of their position.

The Organization contends that this Board has authority to award compensation for violations of the contract even in the absence of a showing of actual monetary loss. See Award 12374 (Third Division):

"A collective bargaining agreement is a joint undertaking of the parties with duties and responsibilities mutually assumed. Where one of the parties violates the Agreement a remedy must necessarily follow. To find that Carrier violated the Agreement and assess no penalty for the violation is an invitation to the Carrier to continue to refuse to observe its obligations This is not the intent of the parties nor the purpose of the Agreement."

The Carrier on the other hand asserts that this Board is without the authority to impose penalties upon the Carrier in the absence of explicit language in the Agreement made the basis of the claim and that there is no such language in the Agreement before us. See Award 14319 (Third Division):

"This Board, beyond question, does not view lightly those infractions which result in Rule violations. We assume, that the Rules were negotiated in good faith by the parties, and thereafter, incorporated into an Agreement in order that peace and stability would be promoted in the industry, as intended by the framers of the Railway Labor Act. However, in the absence of explicit language permitting us to assess a penalty for a violation of this nature, we are relegated to censuring the transgressor, without the ability to impose sanctions."

We are not called upon in the instant case to resolve the contentions of the parties with respect to this Board's authority and while we have found a violation of the Agreement which did not result in actual loss to Claimant we do not find that such violation taken by itself will justify the imposition of a penalty. While this Board in fact does not view lightly those infractions which result in rule violations, however, in isolated instances and in the absence of a showing of design on the part of the Carrier we are reluctant to impose punitive damages for Agreement violations.

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 Employee 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.

A W A R D

Part A of Claim sustained.

Part B of Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of March 1970.