

Award No. 18448

Docket No. TD-18719

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article 1 thereof in particular, when on December 13, 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, the Carrier shall compensate the senior available extra train dispatcher one day's compensation at the pro rata rate applicable to assistant chief dispatcher for said violation.

(c) In the event no extra train dispatcher was available Carrier shall compensate the senior available train dispatcher observing rest days, one day's compensation at the time and one-half rate applicable to assistant chief dispatcher for said violation.

(d) The individual claimant entitled to compensation herein claimed shall be determined by a joint check of the Carrier's records.

**EMPLOYES' STATEMENT OF FACTS:** There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference Article I of said Agreement is here quoted in full:

**"ARTICLE I**

**(a) SCOPE**

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provision of this agreement.

Under the date of September 15, 1969 the General Chairman advised the Director of Labor Relations that his decision was not acceptable to the Organization and that the dispute was being referred to the President of the Claimant Organization for further handling.

All data and contentions herein set out have been the subject of discussion and/or correspondence between the parties or are known and available to the Carrier and therefore made a part of this dispute.

#### **CARRIER'S STATEMENTS OF FACTS:**

##### **CLAIM 1**

July 23, 1968 assistant superintendent issued telegraphic advice that the regular telegrapher would report for work on his regular assignment July 24, 1968 and that the relieving telegrapher would return to the extra board.

On Friday, July 26, 1968 and on Thursday, August 1, 1968 the assistant superintendent notified the regular telegrapher to protect weekend work at Hugo, Oklahoma on call basis as needed. Under Article II (12) of the Telegraphers' Schedule, a telegrapher not assigned to work on rest days and/or specified holidays is not required to be available for service on such days unless given advance notice to be available.

##### **CLAIM 2**

December 13, 1968 the Trainmaster at Enid, Oklahoma issued telegraphic advice to the chief dispatcher and the Agent at Winfield, Kansas notifying the latter of a change in his assigned work period effective December 16, 1968.

##### **CLAIM 3**

January 16, 1969 Trainmaster at Enid, Oklahoma issued telegraphic advice arranging vacation relief for the regular Agent at O'Keene, Oklahoma, commencing January 20, 1969.

##### **CLAIM 4**

December 28, 1968 the Trainmaster at Enid, Oklahoma issued telegraphic advice arranging for emergency relief of the Agent at Clinton, Oklahoma to permit her to accompany her husband to an Oklahoma City hospital for surgery.

**OPINION OF BOARD:** On December 13 1968 Carrier's Trainmaster at Enid, Oklahoma, issued the following message addressed to the Agent at Winfield, Kansas, with information copy to the Chief Dispatcher as well as others:

"Effective Dec. 16, 1968 Agent's hours of work at Winfield, Kansas, are changed to 7:00 A. M. to 4:00 P. M. until further advised."

It is the contention of Petitioner that the supervisory work of giving instructions to Agents, Operators and Train Dispatchers is by the Agreement — supported by history, tradition and custom — exclusively reserved to Chief Dispatcher; therefore, the transmittal of the message, *supra*, by the Trainmaster violated the Agreement.

The Scope Rule in material part reads:

(b) DEFINITIONS:

1. Chief, night chief and assistant chief dispatcher positions:

These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work. (Emphasis ours.)

This provision recognizes that employees in the named classifications have assigned to them some supervisory work; but to what extent is not prescribed. It does not definitively exclusively reserve to employees in the named classification sole supervision "of train dispatchers and other similar employees.

Certainly, supervision of employees is an inherent prerogative of management except to the extent it is divested by a collective bargaining agreement.

To prevail in this dispute Petitioner bore the burden of proving by clear and convincing evidence of probative value that the transmittal of directory messages concerning "train dispatchers and other similar employees," in substance such as here involved, have been communicated, on Carrier's property, exclusively by employees in the classifications listed in (b) of the Scope Rule, *supra*, Petitioner failed to satisfy its burden. We, therefore, must deny 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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

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

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1971.

LABOR MEMBERS' DISSENT TO  
AWARDS 18448, 18449, 18450, 18451  
DOCKETS TD-18719, TD-18716, TD-18717, TD-18718

The majority's opinion is completely erroneous.

The majority's opinion refers to:

“\* \* \* the transmittal of the message \* \* \*”

and

“\* \* \* that the transmittal of directory messages \* \* \*”

The transmission of messages was not the issue of the disputes. The employees never took that position. The issue was persons not within the scope of the agreement performing work covered therein. The work in question was the decision involving the supervision of employees, not transmittal of messages after the decision was made.

For this and other reasons, this dissent is registered.

George P. Kasamis  
G. P. Kasamis  
Labor Member