



Award No. 18461

Docket No. TD-18869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

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 June 3, 1969 it required and/or permitted other than those covered thereby, to perform work covered by said Agreement.

(b) Carrier shall now compensate Train Dispatcher C. W. Walpert one day's compensation at time and one-half the daily rate applicable to Assistant Chief Dispatcher for said violation on the rest day of Claimant.

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.

Article I — Scope is identical in the Agreement effective September 1, 1949, revised as of January 1, 1953 and again revised effective October 1, 1965, insofar as the rules material to this dispute are concerned.

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

"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 provisions of this agreement.

Note (1): Positions of excepted chief dispatcher will be filled by employees holding seniority under this agreement.

At 9:10 A.M., June 17, 1969, Mr. C. E. Hurt, Trainmaster, Quanah, Texas, instructed train No. 31 at Snyder, Oklahoma to bring what he has handy to Quanah. If possible bring 10 mty covered hoppers and 2 mty box.

No. 31 did as instructed.

The various reasons given for the declination of this claim are set forth in the Carrier's letter November 19, 1969, copy attached as Carrier's Exhibit No. 38. The trainmaster who is alleged to have committed the violations in Claims 37 and 38 is one of the division officers who, as such, has responsible control over the operation of a division, or a terminal, or of a major activity within an operating division, and when acting in the discharge of his duties and responsibilities, it is not mandatory that a division trainmaster exercise such responsible control only through employes of the train dispatchers' class, nor do the Rules of the Train Dispatchers' Agreement place such a hindrance or limitation upon him.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim filed on the property stated the facts as follows:

"Party outside the Scope of our Agreement instructed Agent, Hobart, Oklahoma what to do with empty box cars.

Agent, Hobart distributed these cars as instructed by employe not covered by our Agreement. This employe was at Enid, Oklahoma."

Who instructed the Agent at Hobart, Oklahoma and what were the instructions? The only evidence in the record is a copy of a handwritten note made by the trick train dispatcher, presumably at Hobart, Oklahoma, which reads:

"1205 P. M. 6-3-69

Car Distributor Enid instructed HB (Hobart) what to do with mty box cars."

This is merely a conversation between two employes of the Carrier concerning the disposition of empty box cars. It does not reveal what was done with the empty cars, who, if anyone, ordered the cars, or who supervised "the handling of trains and distribution of * * * equipment." Certainly, employes other than train dispatchers deal with and record the existence, the locations and the disposition of cars without involving the above described handling as provided in Article I, (b) 1 (Scope) of the Agreement. A telephone conversation of this kind is not one contemplated in the Scope Rule and is not a violation thereof. See Award 3 of Public Law Board No. 588 on this property.

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

LABOR MEMBERS' DISSENT TO AWARD 18461
DOCKET TD-18869

This award is in error and contrary to Award 14219. Awards 18461 and 14219 deal with persons outside of the controlling Scope Rule, BY TELEPHONE, distributing cars along carrier's right of way, to specific locations. Award 18461 makes reference to: "This is merely a conversation * * *" If carrier can hide behind mere conversations, any carrier can circumvent any written agreement.

Award 18461 places considerable weight on Award No. 3 of Public Law Board No. 588. The claim in Award No. 3 was based upon the ordering of trains. Award 18461 was for the distribution of equipment (cars).

The majority failed to recognize the plain and simple fact that when carrier consolidated its train dispatching offices into Springfield, the carrier created complex problems and supervisory problems rightfully belonging to the train dispatcher craft.

Prior to the office consolidations on this carrier, the parties to the dispute in Award 18461 had two dockets before this Board. One involved the Scope Rule. Subsequent to the consolidations, these parties have had thirty-four (34) dockets before the Board of which twenty-one (21) involved the Scope Rule. The parties have also established Public Law Board No. 588 which has sixty-two (62) dockets involving the Scope Rule.

This is ample proof that there is a slow erosion of train dispatcher's work on this carrier.

For this and other reasons, this dissent is registered.

George P. Kasamis
G. P. Kasamis
Labor Member

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO
AWARD NO. 18461, DOCKET NO. TD-18869**

The dissenter goes far afield in contending that because the Petitioner has filed numerous claims alleging violations of the Scope Rule this it proof that there is a slow erosion of train dispatcher's work on this Carrier.

It is elemental that anyone can allege anything, but allegations remain just that until proven. The number of disputes decided adverse to the Petitioner's allegations, is evidence of the lack of substance to most of the allegations.

The dissent will become a part of the record but it does not detract from the soundness of Award 18461.

P. C. Carter
P. C. Carter

R. E. Black
R. E. Black

H. F. M. Braidwood
H. F. M. Braidwood

W. B. Jones
W. B. Jones

G. L. Naylor
G. L. Naylor