

Award No. 18568
Docket No. TD-18874

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 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 May 26, 1969 it required and/or permitted other than those covered thereby, to perform work covered thereby, to perform work covered by said Agreement.

(b) Carrier shall now compensate Train Dispatcher K. E. Kellett 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 1 — 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 1, Scope, of the Agreement is here quoted in full text:

"ARTICLE 1

(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.

No. 31 did as was instructed.

The various reasons given for declination of this claim are set forth in the Carrier's declination letter November 19, 1969, copy attached as Carrier's Exhibit No. 37.

CLAIM 38

This claim was presented on the following reported Statement of Facts:

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 employees 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: On May 26, 1969, the Trainmaster at Enid, Oklahoma "issued the following instructions to those charged with the duty of carrying out the instructions with a copy to the Chief Dispatcher at Springfield, Missouri:

"Enid May 26-29

Rte: Run 2 units on No. 663 in A.M. and they will go thru to Snyder.

Yard: Fill No. 663 with Jumbo XCH and list to Mtn Park and list the ACL XCH to Bessie. Fill to two engine rating. Joint RTE-Yard Clerks-Caller-HOB.

W. H. Hulsey"

The message to run two units on train No. 663 and to run them thru to Snyder is an order for the "distribution of power and equipment" incidental to the supervision of the handling of that train. All of this is work which belongs exclusively to train dispatchers under the Scope Rule. See Award No. 1 of Public Law Board No. 588 on this property. The mere fact that a copy of the message went to the Chief Dispatcher at Springfield, Missouri does not allow the Carrier to otherwise violate the Agreement.

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 violated.

AWARD

Claim sustained.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.