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 I thereof in particular, when on May 27, 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 W. J. Ludwig 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 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.

OPINION OF BOARD: Employes' claim is predicated on the Train Dispatcher's hand written note that "on May 27, 1969 Train No. 337, Conductor Racy, consumed twenty-five (25) minutes at Beaumont unloading Company material as instructed by someone other than those covered by the Agreement." Who so instructed the conductor? For all that is known in the record the train dispatcher ordered the movement of the train. A mere delay in itself is not evidence of a Scope Rule violation.

No distribution of power and equipment was involved and there is no clear and convincing evidence that any one other than the train dispatcher was responsible for the movement of the train. Furthermore, there is no showing that the train was moved by a train order.

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 23rd day of June 1971.

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