

Award No. 18941

Docket No. TD-18888

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 15, 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. E. Gray 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 I, 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. 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:** The claim presented by Employees on the property reads:

"Party or parties not within the Scope of the said Agreement at Enid, Oklahoma, lined up Lela Turn to go to Lela to wait and get No. 637's train and crew account 16 hours, to drag train to Enid. Also lined up deadhead crew to go via auto to Perry to also get No. 637.

This service was performed as outlined above."

The incident, according to Employees, occurred on June 15, 1969 and the claim was presented to the Carrier on August 1, 1969. On September 5, 1969 Carrier's Superintendent replied, in part, as follows:

"The carrier has no record to establish that instructions were issued, as alleged. Furthermore, your statement of facts is vague and indefinite in that it does not reveal whether the alleged instructions were verbal or written, or by whom issued. Records further indicate that a Lela Turn was not operated, as alleged. Even if the alleged incident transpired, it is not work reserved exclusively to train dispatchers by specific agreement rules, history, tradition or practice.

Under the circumstances claim is declined for lack of proof, merit and agreement support."

On appeal, the Carrier on November 18, 1969 wrote to the General Chairman, in part, as follows:

"The Superintendent Transportation has heretofore interposed objections concerning the vagueness and indefiniteness of this claim, and as there is no confirmation in the Carrier's records of the operation of a Lela Turn on the claim date or of the alleged instructions issued by unidentified person or persons, I am unwilling to accept unsubstantiated and undocumented representations as competent evidence of the alleged violation."

A first essential is for Employees to prove the allegations in the claim. And they have the burden of proof. There is no competent and convincing evidence in the record that the incident in the claim actually occurred. The only statement with respect to the basic facts, upon which the claim is predicated, appears in Employees' Submission as follows:

"The General Chairman informed the Director of Labor Relations that, not having access to Carrier records, could neither confirm nor

deny the fact that the Lela Turn was not operated to Perry but could confirm that 637's train was not moved to Enid by the crew that had tied up on the line to avoid violating the Hours of Service Law."

This is not evidence; it is only an assertion. The Employees could have asked the Carrier to produce their records to ascertain whether or not the Lela Turn operated to Perry. They could have produced the crew's time claims, if any existed. A statement that the General Chairman "could confirm that 637's train was not moved to Enid by the crew that had tied up on the line to avoid violating the Hours of Service Law" is not evidence. Employees should have produced time claims and/or affidavits from the crew members to justify the existence of this fact. Further, there is absolutely no evidence who issued the instructions. A hand written note from the train dispatcher on duty to the General Chairman quoting the message does not establish the identity of the person who allegedly sent it. For all these reasons, the Board is obliged to find that the claim has no merit.

**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 12, 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 14th day of January 1972.