

Award No. 19082
Docket No. TD-18890

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 19, 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 J. E. Roberts 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.

EMPLOYEES' 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.

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 train-master 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: Employees' presented the following claim:

"Dewayne Wilson, employe not within the Scope of said Agreement, instructed Conductor Gainer, No. 663, at 2:35 P. M. on June 19, 1969, to take 3 empty covered hoppers to Co-op at Cordell. Instructions that Mr. Gainer on No. 663 obeyed."

Carrier alleges that Dewayne Wilson has "disclaimed knowledge of the incident." Mr. Wilson was Manager, Transportation Quality Control. On August 21, 1969, he wrote to the Superintendent of Transportation with regard to this claim, in part, as follows:

"I do not recall issuing Conductor Gainer on Train 663 instructions to take 3 empty covered hoppers to Co-op at Cordell."

The burden of proof is upon the employees. A mere assertion that Mr. Wilson issued the instructions is not evidence. Testimony from the crew of Train 663 that they received and executed the instructions from Mr. Wilson would have been the best evidence in view of Mr. Wilson's disclaimer. No preponderance of evidence exists upon which this Board may make a determination in favor of the Employees. For the lack of such evidence, the claim must be dismissed.

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 allegations in Employees submissions are not sufficient to support a consideration and a determination of the merits of the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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