

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 V. L. Walker 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 dispatcher. 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.

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 is based on the following:

"At 11:45 A.M., June 19, 1969, Operator, Enid, Oklahoma, gave No. 631 message at Blackwell to swap trailing unit with one unit off No. 632 at meeting point."

Although Carrier alleges that it has no record of such instructions, the record is clear that they had been issued and that the crew did as instructed.

The message is a "distribution of power and equipment" incident to the supervision of the handling of trains. This work belongs exclusively to the Chief, Night Chief and Assistant Chief Dispatcher under Article I — Scope Rule. In permitting the Operator to send that message, Carrier violated the Rule.

Since the Claimant did not actually perform any of the work complained of, he is entitled to recover one day's compensation at the straight time rate and not at the overtime daily rate.

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 Carrier violated the Agreement.

AWARD

Claim is sustained for one day's pay at straight time the daily rate.

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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