

Award No. 19088
Docket No. TD-18896

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 22, 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 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.

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: Employees allege that the Trainmaster at Enid, Oklahoma issued the following message:

"EN A 994 SO 310 06/22/9 2100
En Enid, June 22-69, 7:33 P. M.

HOB SO

No. 637 CY

Pick up at Sumner 19-0-2040 tons waybills at Morrison, pick up at Lucien 21-3-2653 tons List and Bills in box. Pick up at Covington list and bills in box. Set out your covered hoppers at Perry listed Perry and be sure set out your 5 XG at Covington for work extra.

W. H. H. 96/22/9 2111"

Even if it can be assumed that the crew acted upon the message from the Trainmaster and not from H. O. Buzbee, the Chief Train Dispatcher, it is still not a train order nor does it involve the "distribution of power and equipment." It is merely an instruction to pick up and set out cars which, we have held, is an incidental part of a Trainmaster's duties and is not a violation of the Scope Rule. See Awards Nos. 18938, 18689, 18593, 18690 and 18692 as well as Awards Nos. 4, 18, 22, 23, 25 and 26 of Public Law Board No. 588 on this property.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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.