

 Award No. 19091

Docket No. TD-18899

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 24, 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 F. DeBerry 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.

(b) DEFINITIONS:

1. Chief, night chief and assistant chief dispatcher positions:

These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick train dispatchers:

This class includes positions in which the duties of the incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

(c) Section (b) of this Article shall not operate to restrict the performance of work as between the respective classes herein defined, but the duties of these classes may not be performed by other officers or employees for the purpose of avoiding the employment of additional train dispatchers."

The instant dispute had its inception when, on June 24, 1969 Mr. Bob Rust, an employee not within the Scope of the Agreement, instructed Clinton, Oklahoma to distribute empty covered hopper cars on hand at Clinton to Cordell, Oklahoma. Said instructions were complied with by force at Clinton.

Timely claim was filed under the date of August 2, 1969 and the Superintendent Transportation denied the claim by letter dated September 5, 1969 stating in part:

"The carrier has no record to establish that the instructions were issued as alleged. Furthermore, records do not indicate that any train picked up empties at Clinton, Oklahoma on the date in question. Even if the incident transpired, as alleged, it is not work reserved exclusively to train dispatchers by specific agreement rules, history, tradition or practice."

On October 18, 1969 the General Chairman advised the Superintendent Transportation that his decision was not acceptable and that it would be appealed to the Director of Labor Relations.

On the same date General Chairman C. E. Gray addressed an appeal to Director Relations T. P. Deaton and under date of November 18, 1969 the Director of Labor Relations denied the claim and scheduled conference in his office 10:00 A. M., Thursday, December 11, 1969.

Conference was held at the time and place designated wherein the Director of Labor Relations reaffirmed his decision of November 18, 1969 as follows in pertinent part:

"There is no confirmation in the Carrier's records of the alleged incident, and I am unwilling to accept unsubstantiated and undocumented representations as competent evidence of the alleged violation.

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 presented the claim as follows:

"Mr. Bob Rust, an employee not within the Scope of the Train Dispatchers Agreement, instructed Clinton, Oklahoma to list empty covered hopper from Clinton Elevator to Cordell, Oklahoma. Instructions that were obeyed by the Agent at Clinton as instructed."

The record does not identify Bob Rust, his occupation, his craft, or his position with the Carrier. Nor does the record show to whom the alleged message was addressed. Since the Carrier has no record of the alleged message, Employees have not established by a preponderance of evidence, that the message was sent or that the alleged instructions were acted upon. Employees have not met the burden of proof.

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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