

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19466
Docket Number TD-18415

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(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, and continues to violate, the effective Agreement between the parties, Article 1 thereof in particular, when, beginning July 26, 1968, it required and permits, and continues to require and permit, other than those within the scope of the said Agreement to perform work covered thereby at Hugo, Oklahoma.

(b) The Carrier shall compensate the senior available extra train dispatcher one day's compensation at pro rata daily rate applicable to Assistant Chief Dispatcher, beginning July 26, 1968, and continuing for five days of each week, and at time and one-half at said rate for service required to be performed on the sixth and seventh consecutive days of each week, until said violation ceases.

(c) In the event no extra train dispatchers are available on any day or days during the period in which said violation continues, then and in such event Carrier shall compensate the senior assigned train dispatcher then available because of observance of his assigned weekly rest days, one day's compensation at time and one-half of daily rate applicable to Assistant Chief Dispatcher for each of such days until the said violation ceases.

(d) The respective individual claimants entitled to compensation herein claimed shall be determined by a joint check of the Carrier's records.

OPINION OF BOARD: During a period which began on July 26, 1968 and ended on August 6, 1968 Carrier operated under the following instructions from its Chief Dispatcher:

"Springfield July 26, 1968

NCD
DS SOUTH

Following instructions from Mr. Bitner-

When get OS on No. 33 leaving Cherokee Yard
each night call Opr at Hugo and tell him when
No. 33 left Cherokee Yard. The Opr will de-

"termine when to call No. 735 and call crew accordingly.

HOB 316 p.m."

Both parties rely on Awards from PL Board 588, on the property, and awards of this Board, also originating on this property.

The awards cited by Carrier hold that the act of calling a crew is not work reserved exclusively to claimants. For example in Award No. 3, Board No. 588 considered the following message:

"QUD Quanah 10 P.M. Sept. 01 69
HOB SO
FMG FL
FMG Call No. 36 at Floydad For
530 A.M. Sept. 2nd
CEH"

In considering the import of the message it said:

"This is not a train order. It is not an order moving a train. It is, rather, an order to call the crew for the named train. A Trainmaster or a clerk under his direction may call a crew for work assignment. There are also crew callers whose duty it is to call crews in accordance with seniority sheets and availability when needed for specific assignments. This work is not covered in the Train Dispatchers' Scope Rule."

PL Board 588 found that the act of calling is not reserved to Train Dispatchers. The Organization does not contend that it is. It is decision making, or in contractual terms, "the handling of trains and the distribution of power and equipment incident thereto" that the Organization claims is reserved to its members.

In Award No. 19 PL Board 588 considered a message from a Trainmaster which read:

"No. 34 operate Ft. Worth-Irving with OP-7 unit get road units off 437 at Irvington, Joint."

The Board said:

"The message is definitely an order for the 'distribution of power and equipment' incidental to the Supervision of the handling of the train. In Award No. 1 we held that this is work which belongs exclusively to train dispatchers under the Scope Rule."

The inquiry here must be, then, whether the work assigned to the operator was merely the calling of the crew, or whether he was given the responsibility for the supervision of the handling of the train. As Award No. 19 holds, on this property such work is reserved to Train Dispatchers. It is clear that the operator was given, and exercised, the decision making supervision concerning when to order 735. The message makes this clear. He is to "determine when to call No. 735." He can only do this by engaging in work reserved to claimants. In assigning him to do it Carrier violated the agreement.

Notice was given to the TC Division, BRAC, and it entered a disclaimer in this dispute.

The claim is for unnamed claimants, however they can readily be determined, from Carrier's records.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

A W A R D

Part (a) is sustained; Part (b) is sustained, as modified to include only those dates between July 26, 1968 and August 6, 1968 inclusive, on which the violation occurred; part (c) is sustained; part (d) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.