

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19467  
Docket Number TD-18442

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the American Train Dispatcher 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 I thereof in particular, when beginning May 27, 1968, it required and permits and continues to require and permit, other than those within the scope of said Agreement to perform work covered thereby at Enid, 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 May 27, 1968, and continuing for five days of each week, and at time and one-half of 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 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: This is a claim which must be denied because the evidence advanced by claimant does not prove what he states that it proves. In the years before 1968 Carrier assigned a train dispatcher to handle the extra work at Enid, Oklahoma during the grain season. In 1968 Carrier assigned an additional telegrapher and did not assign a train dispatcher. In part, at least, the claim advances the theory that if a dispatcher was required before, he was not only required during the claim period but his absence proves that an employee of another class must have been doing dispatchers' work.

This may be a logical assumption. However, even if it is, the Board does not decide claims on the basis of assumption. It requires proof, and the burden is upon the party making the claim. The proof offered is in the form of certain messages sent by the telegrapher and on a quotation from a letter from the telegrapher. Neither the messages or the quotation from the letter establish the point which claimant must prove. If anything they assist in establishing a defense, for they tend to show that the telegrapher did not undertake to do the work of a Train Dispatcher and the Chief Dispatcher made the required dispatching decisions in telephone conference with the Trainmaster. The claim must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. G. Killen  
Executive Secretary

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