

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20053**
Docket Number TD-19981

Burl E. Hays, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Article 1(d) thereof in particular, when it required and/or permitted other than those within the scope of said Agreement in Carrier's Cicero, Illinois train dispatching office, to perform work covered thereby on July 26, 1970.

(b) For the above violation, Carrier shall now be required to compensate Claimant C. D. Richmond eight (8) **hours** at the punitive rate of pay then applicable to train dispatchers for July 26, 1970.

OPINION OF BOARD: About the only things the parties agree to in this case is that "an operator", who manned and operated a C.T.C. machine near Pacific Junction, Iowa, lined switches and signals for train #101 to move through C.T.C. territory from Red Oak to Emerson on July 26, 1970. From this point on the parties disagree on practically everything else relative to the **claim.**

The Organization filed this claim on behalf of C. D. Richmond, senior regularly assigned train dispatcher, for eight (8) hours on that date at punitive rate of pay, alleging violation of Article I(d) which reads as follows:

"Centralized Traffic Control machines at present in service and in the future installed will be manned and operated by train dispatchers when the machine is located in offices where train dispatchers are employed. When a C.T.C. machine is located in an office where train dispatchers are not employed and it is manned and operated by other **employees**, a train dispatcher shall have and exercise complete authority over the movement of, and shall control and direct all train movements in such territory.

NOTE: This shall not affect the present manning of C.T.C. machine by telegraph operators at Pasco."

There is no dispute between the parties as to the proper interpretation and application of this rule. Rather the dispute seems to rest in the apparent misunderstanding between the Operator and the Dispatcher as to what instructions were issued by the Dispatcher to the Operator with respect

to the handling of Train #101.

The Organization contends this Operator (identified by Carrier as L. E. Myers) moved train #101 "without first obtaining positive authority from the Train Dispatcher in control". (R.p.4) Carrier's Superintendent, in denying the claim, did so contending that "the Operator understood the Train Dispatcher to so authorize the move." (R.p.4) Thus, we have the dispute. Conflicting evidence presented by the parties is quite pronounced.

For instance, in the Superintendent's letter of declination dated September 1, 1970, he said:

"Operator L. E. Myers advises that he understood the Dispatcher to line No. 101 to Emerson and he took that action. **** The Operator informed the Dispatcher that he understood that was the Dispatcher's instructions."

The Organization denies this, claiming that "no such contact was completed until after the operator had allowed train #101 to proceed by his station without the positive authority of the train dispatcher....." In support of **this** position the Organization, at a conference on April 21, 1971, delivered to Carrier's representative a letter from Office Chairman Kassers to General Chairman Darragh, dated September 11, 1970, containing the following language :

"Following is the contents of a letter I received from Dispatcher R. E. Wachter who was on duty at the time of the violation:

'Today (7/26/70) operator at Pacific Jct. came on dispatcher ~~fone~~ and said '101 on at Red Oak'. I was in process of giving #165 to Ottumwa, after I finished giving #165 to Ottumwa operator I told Pacific Jct. operator to hold #101 at Red Oak **because** Yard Pac Jct could not ~~handle~~ him, I then rang on the radio and informed #101 we were going to hold him at Red Oak until yard at Pac Jct could handle, at 7:45 a.m. operator Pac Jct came in on the telephone and 'OS' #101 by Red Oak at 7:45 a.m., I asked him who gave you permission to Line-up the train, he said, 'I did **not** hear you say anything about what to do with the train, so I naturally gave #101 the green signal to Emerson'."

Carrier questions the identity of the person **who** wrote the above quoted **statement**, alleging that it might have been written by Claimant, by the Office **Chairman**, or someone else. Carrier further points out that the

original of this ~~allegeu~~ Wachter letter was never produced, and that the identity of the alleged author was not disclosed until Petitioner filed its rebuttal with the Board. The Organization strongly denies these charges and insists that, as alleged, the letter was written by Dispatcher W. E. Wachter, who was "on duty at the time of the violation"; that it was written on the date claimed, July 26, 1970, and received by Office Chairman Kassera.

Carrier raises the question of the Organization waiting seven months ~~from~~ the filing date of the claim, and nine months from time of alleged violation, to present this Letter of Office Chairman Kassera which contains the Wachter statement. On the other hand, the Organization asks why did Carrier wait three months to raise an objection to the statement, and why wasn't an objection made at ~~the time~~ the statement was produced at the conference between the parties.

Such conflicting charges and counter-charges continued throughout the presentation of this case. The Organization says that Claimant Richmond was not on duty at time of alleged **violation** and became the claimant here because he was the senior regularly **assigned** dispatcher "off duty and available at a time when there were no ~~extra~~ train dispatchers available". Carrier insists that such contention was never made on the property, that his **timeslip** signed by the Office **Chairman** does not mention that he was on his rest day and off duty, and that therefore Carrier's position that Claimant was working and Lost nothing should prevail.

Carrier contends that no proper report was made at the time of the alleged violation. Organization insists that Claimant Richmond was under no obligation to make a report of such an incident that he had no personal knowledge of by reason of his being off duty at the time of its occurrence. Organization further maintains that the report made by Dispatcher R. E. Wachter, as quoted in Office Chairman Kassera's Letter, was sufficient and proper.

There is so much conflicting evidence in this case that the Board is unable to determine what actually did happen at the time of the alleged violation of the Agreement and, since we are unable to resolve the conflict, we have no alternative but to dismiss the claim.

In support of this action we rely on Third Division Awards 18806 (Devfne), 18871 (Franden), 19501 (O'Brien), 19531 (Brent), as well as Public Law Board 694, Awards 16 and 17.

FINDINGS: ~~The~~ Third Division of the Adjustment Board, ~~upon~~ the whole record and ~~all~~ the evidence, finds end 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; end

~~That~~ the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day Of November 1973.