

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24184
Docket Number TD-24417

Martin F. Scheinman, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

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

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the currently effective Agreement between the parties, Rule 1 - SCOPE, Rule 2(b) and Rule 2(f) thereof in particular, when it permitted and/or required a person not covered by the schedule Agreement to perform train dispatcher work falling within such Agreement on June 28, 1980.

(b) Because of such violation the Carrier shall now compensate Claimant D. F. Gliord as senior qualified and rested train dispatcher at such time, one days' pay at the pro rata rate applicable to trick train dispatchers for June 28, 1980.

OPINION OF BOARD: This claim arises from contradictory orders given by a train dispatcher and a yardmaster to Train No. 20141, Extra 6818 West at Clinton, Iowa on June 28, 1980. At 7:35 p.m. on that date, the train dispatcher ordered Extra 6818 West not to depart the Clinton, Iowa yard ahead of Train No. 241, a "hotshot" westbound train due to depart Clinton at about the same time. However, at approximately 8:30 p.m., the yardmaster at Clinton ordered the Extra 6818 West to depart, ahead of Train No. 241 West.

As a result of the yardmaster's order, the Organization filed this claim alleging that the order violated Rule 2 of the Agreement between the parties. That rule reads, in relevant part:

"Rule 2

(b) DEFINITION OF TRICK TRAIN DISPATCHERS' POSITIONS

This class includes positions in which the duties of 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.

(f) WORK PRESERVATION

The duties of the classes defined in sections (a) and (b) of this Rule 2 may not be performed by persons who are not subject to the rules of this agreement."

While the Organization acknowledges that orders within a yard fall generally under the direction of the **yardmaster**, here the yardmaster authorized the Extra 6818 West to operate in a westwardly direction beyond the limits of the Clinton yard. Thus, the Organization insists that the **yardmaster** was clearly performing train dispatcher's work by so authorizing the Extra 6818 west.

Furthermore, the Organization notes that the train dispatcher had specifically ordered the Extra 6818 West to wait the departure of the No. 241 before it left the Clinton yard. The Organization asserts that this order was transmitted to the **yardmaster** by a crew-member of the Extra 6818 West who, nevertheless, ordered that train to depart, in contravention of the train dispatcher's explicit instructions. Thus, in the Organization's view, the yardmaster acted outside the scope of his authority when he ordered the departure of the Extra 6818 West, contrary to the train dispatcher's orders.

Finally, the Organization points out that Rule 2(f) is a work preservation rule. Since train dispatcher's work was improperly given to a yardmaster, the Organization seeks, as a remedy, one day's pay for Claimant D. F. Gifford, the senior qualified and rested train dispatcher as of June 28, 1980.

Carrier, on the other hand, insists that there is no violation of the Agreement. First, it notes that orders within a yard properly belong under the control of the **yardmaster**. Here, the order to the Extra 6818 West was given within the confines of the Clinton yard. In Carrier's view, it was necessary for the yardmaster to order the Extra 6818 West's departure to avoid congestion within the yard. This is clearly a legitimate function of the **yardmaster**. -

Furthermore, Carrier denies that the **yardmaster** had knowledge of the train dispatcher's contradictory orders. Carrier notes that the train dispatcher failed to inform the **yardmaster** directly that he (the dispatcher) had ordered the Extra 6818 West not to depart before the hotshot No. 241. Thus, according to Carrier, the **yardmaster** acted reasonably, especially since any breakdown in communications was by the train dispatcher's failure to transmit his order to the **yardmaster**. For these reasons, Carrier asks that the claim be denied.

It is undisputed that the control of train movement within the yard generally belongs to the **yardmaster**. Outside the yard, -that control is properly the train dispatcher's.

However, that distinction becomes blurred where an order is given within a yard which obviously directs a train's movements outside the yard. Claims based on these types of occurrences can best be decided on a case by case basis, taking into account all the facts and circumstances involved. Eased upon the record evidence of this docket, we are convinced that the **yardmaster** acted properly and reasonably when he ordered the departure of the Extra 6818 West ahead of the No. 241. --

First, the Extra 6818 West was obviously within the yard when the order was given, tiiereby establishing the primary jurisdiction of tie yard-aster over its movements. In addition, there was apparent congestion in the yard. Clearly, it was necessary that some train or trains be moved.

Moreover, there is not sufficient evidence to prove that the yardmaster was aware of the train dispatcher's contrary orders. While it is possible that the yardmaster spoke to a crew member of the Extra 6818 West concerning its movement out of the yard, the undisputed fact remains that the train dispatcher did not directly communicate his order to the yardmaster, despite his clear obligation to do so. Bad the yardmaster given the crew a contrary order after hating been informed of another order by the train dispatcher, our determination might well be different. However, absent that contrary order, the yardmaster clearly acted within the scope of his authority (i.e. - the yard) when he ordered the departure of the Extra 6818 West before the hotshot No. 241. Accordingly, under the facts of this claim, the yardmaster's order did not constitute train dispatcher's work. Thus, 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 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 Agreement was not violated.

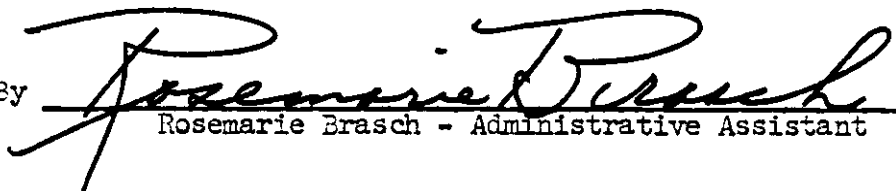
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
Rational Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.