

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

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

CLAIM #1 - Carrier file DISPR 152-806

(a) The Southern Pacific Transportation Company (herein referred to as the Carrier) violated the effective schedule agreement between the two parties, Article 1 Section (b) thereof in particular, when it permitted or required a person not classified as Chief, Night Chief, or Assistant Chief Dispatcher to perform work specified in Article 1 Section (b) on March 30, 1983.

(b) Due to such violation, the carrier shall compensate Claimant, N. E. Marquis as rested and qualified regular assigned Train Dispatcher available at such time, one days pay at the pro-rata rate applicable to Assistant Chief Dispatcher for March 30, 1983.

CLAIM #2 - Carrier file DISPR 152-805

(a) The Southern Pacific Transportation Company (herein referred to as the Carrier) violated the effective schedule agreement between the two parties, Article 1 Section (b) thereof in particular, when it permitted or required a person not classified as Chief, Night Chief, or assistant Chief Dispatcher to perform work specified in Article 1 Section (b) on March 31, 1983.

(b) Due to such violation, the carrier shall compensate Claimant, T. S. Hunter as rested and qualified regular assigned Train Dispatcher available at such time, one days pay at the pro-rata rate applicable to Assistant Chief dispatcher for March 31, 1983.

CLAIM #3 - Carrier file DISPR 152-833

(a) The Southern Pacific Transportation Company (herein referred to as the carrier) violated the effective schedule agreement between the two parties, Article 1 Section (b) thereof in particular, when it permitted or required a person not classified as Chief, or Assistant Chief Dispatcher or Night Chief to perform work specified in Article 1 Section (b) on July 20, 1983.

(b) Due to such violation, the carrier shall compensate D. L. Knepper as rested and qualified regular assigned Train Dispatcher available at such time, one days pay at the pro-rata rate applicable to Assistant Chief Dispatcher for July 20, 1983.

CLAIM #4 - Carrier file DISPR 152-832

(a) The Southern Pacific Transportation Company (herein referred to as the Carrier) violated the effective schedule agreement between the two parties, Article 1 Section (b) thereof in particular, when it permitted or required a person not classified as Chief, Assistant Chief or Night Chief to perform work specified in Article 1 Section (b) on November 16, 1983.

(b) Due to such violation, the carrier shall compensate S. A. Kaveloh as rested and qualified regular assigned Train Dispatcher available at such time, one days pay at the pro-rata rate applicable to Assistant Chief Dispatcher for November 16, 1983."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The case before the Board consists of four claims which have all been consolidated for presentation to this body. The primary thrust of the claims is that the Carrier violated the Scope Rule of the Agreement when it permitted non-agreement employees "...to call trains and/or distribute power....without knowledge and/or permission of the Train Dispatcher..."

Based on the facts developed on the property, we find ourselves in agreement with the Organization. Here, we give particular weight to the following: the Organization's letter of May 3, 1985, to the Carrier; the fact that the Carrier's Foreman attempted to contact the Dispatcher before he (the Foreman) assigned power, a tacit acknowledgment that the Dispatcher performed the functions at issue; and past awards which have addressed similar issues and rules as we have here in this case.


With respect to damages, we find the time taken to perform the task so short as to be inconsequential. We will, therefore, apply the de minimus principle here and find that damages are not warranted.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.

LABOR MEMBER'S
CONCURRING AND DISSENTING OPINION
to
Award 27672 - Docket TD-26734
Referee Muessig

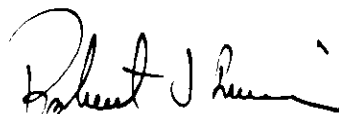
It is gratifying that the Majority here properly sustained this Claim on its merits, reinforcing the integrity of the Scope Rule on this property.

On the other hand, we are quite disappointed that no monetary allowance was awarded. We have had several occasions to address this issue in the recent past, and our Concurring and Dissenting Opinions in Third Division Awards 26073, 26381, and 26496 are incorporated herein by reference.

The failure to assess a monetary penalty when there is a proven breach of the Agreement only serves to encourage the offending carriers to test the limits to which they can go. There is no incentive to adhere to the Agreement, for the departure therefrom is almost risk-free.

People steal automobiles with no sense of fear because 85% of auto thieves are never apprehended. Of those 15% who are apprehended, only a few are convicted, and most of those convicted receive suspended sentences or probation.

The same mathematical success rate guides carriers and auto thieves, alike.



Robert J. Irvin
Labor Member