

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The Burlington Northern Railroad Company (hereinafter referred to as 'the Carrier') violated the current effective agreement between the Carrier and the American Train Dispatchers Association (hereinafter referred to as 'the Organization'), Article 1(b) in particular when, on Wednesday, August 9, 1989, it allowed and/or required a Maintenance of Way machine operator to send a message directing train 262 at Texline, TX to move a repaired bad order car from one station to another without advising the Assistant Chief Train Dispatcher on duty at McCook, NE.

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It is the position of the organization that the Carrier now compensate Train Dispatcher T. W. Bennett one (1) days compensation at the overtime rate applicable to Assistant Chief Train Dispatcher for August 9, 1989."

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 Organization objected to an instruction given by an employee other than one covered by its Agreement since, it argues, that duty shall be exclusively performed by incumbents of defined positions.

The Carrier disputes that the Agreement expressly reserves the work of issuing instructions for picking up cars exclusively and solely to train dispatchers, chief and assistant chief dispatchers since the Rule is general in nature and fails to detail any particular work to ATDA represented employees. Under those circumstances, the Organization must prove "exclusivity."

Third Division Award 20016 which decided a dispute between these parties, noted that "...Petitioner asks us to reverse the reasoning in a long series of Awards all of which hold that issuing orders for picking up and setting out cars is not work which belongs exclusively to Train Dispatchers ..." it concluded that:

"...sending messages to set out or pick up cars is not work which belongs exclusively to Train Dispatchers under the Scope rule above..."

See also Third Division Award 20212:

"After considering all portions of the Scope rule, we are unable to find that this Docket presents concepts which have not been advanced to, and thoroughly considered and rejected by, this Board in numerous recent determinations; the most recent of which concerning this Carrier.

We are unwilling to overturn the precedents, absent a showing that the rulings are palpably erroneous. We are not able to make such a finding in this case."

For the reasons set forth above, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.