

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29911
Docket No. TD-30201
93-3-91-3-655

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"The Duluth Missabe and Iron Range Railway Company (hereinafter referred to as 'the Carrier') violated the effective agreement (effective December 1, 1972) between the parties, namely Rule 1 when Trainmaster Mr. P. A. Sullivan by his own admission ordered an extra unit on the 11AM Interdivisional Miscellaneous Road Freight at 720AM June 20, 1990.

For the above violation, the Carrier shall now compensate Claimant, Assistant Chief Dispatcher G. L. VanDervort one days pay (eight hours) at the rate of pay for the position of Assistant Chief Dispatcher."

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 employe 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.

On June 20, 1990, Train MRF was scheduled to operate between Proctor and Two Harbors with a specific locomotive consist. This locomotive consist had been ordered by a Train Dispatcher. Approximately two and a half hours before the 11:00 AM scheduled departure, a Carrier Trainmaster telephoned Carrier's Locomotive Department and instructed that one additional unit be connected to

the engine consist. The addition was made because an extra locomotive was needed for a maintenance exchange at Two Harbors. After the Trainmaster gave these instructions directly to the Locomotive Department, he informed the on-duty Train Dispatcher of his actions. The Organization filed the ensuing claim, contending that its Scope Rule, was violated when other than a Train Dispatcher issued instructions to the Locomotive Department concerning the distribution of power. The Organization does not dispute that the Trainmaster may make a decision concerning the assignment of power, but insists that all resulting instructions to those who are to implement the decisions, must be issued by Assistant Chief Train Dispatchers.

The parties Scope Rule defines the duties of Assistant Chief Dispatcher as:

"...be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

(Underlining added.)

It is the underlined portion of the above that the Organization stresses was specifically violated when the Trainmaster issued orders directly to Carrier's Locomotive Department concerning the distribution of power.

In this case the Board is compelled to agree. What occurred was that a decision was made by the Trainmaster and placed into effect by him. That decision involved the supervision of the distribution of power and equipment. It was implemented in a manner that completely bypassed the Assistant Chief Train Dispatcher, even though the definition of his position involves the very task now being performed by the Trainmaster. It is insufficient that the Assistant Chief was informed of the action after it was completed. His job is to supervise the handling of trains and the distribution of power. Receiving information that someone else undertook the supervision of power is not the same and bypasses responsibilities conveyed to the Assistant Chief Train Dispatcher by the Agreement.

The claim will be sustained. However, the Board finds the damages requested to be excessive. Instead of 8 hours at the rate of pay of the Assistant Chief Dispatcher's position, the amount claimed, the Board will allow 3 hours pay at the time and one half rate.

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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 9th day of November 1993.