Award No. 3421
Docket No. TD-3427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

STATEMENT OF CLAIM: Claim by the American Train Dispatchers Assocation that:

(a) The Southern Pacific Company (Pacific Lines) is violating and is continuing to violate the terms of the agreement governing working conditions of train dispatchers, entered into between this Carrier and its train dispatchers as represented by the American Train Dispatchers Association, by not assigning train dispatchers who hold seniority rights to the Los Angeles Division, covered by said agreement to perform train dispatcher service on all portions of the operating division under the jurisdiction of the Superintendent of the Los Angeles Division, instead of permitting such service to be performed by train dispatchers in the employ of a foreign (Mexican) carrier, and

(b) That the Carrier shall now return to the Los Angeles Division of train dispatchers for train dispatching purposes that part of the Los Angeles Division known as the Calexico Sub-division, ecective as of the date (July 19, 1945) claim therefor was presented.

EMPLOYES' STATEMENT OF FACTS: There has existed for many years, and there exists now, an agreement between the Southern Pacific Company (Pacific Lines) and its train dispatchers represented by the American Train Dispatchers Association governing the hours of service and working conditions of train dispatchers. The latest agreement was made effective October 1, 1937.

On page one of this agreement under the caption FOREWORD appears the following:

> "In consonance with the provisions of the Railway Labor Act, as amended June 21, 1934, the American Train Dispatchers Association is hereby recognized as the duly authorized and delegated representative of train dispatchers **in the service of the Southern Pacific Company (Pacific Lines)** and for the Management to so consider and accordingly deal with the representatives of said Association will be construed as being one of the requirements of the following agreement." (Emphasis ours.)

Also on page one, of said current agreement, under the caption Article 1—Scope, section (a), appears the following:

> "This agreement shall govern the hours of service and working conditions of train dispatchers.

lished; therefore, it is not possible to "return" to the coverage of the agreement work that was not at any time covered. In the third place, there is no basis for the effective date (July 19, 1945) set forth in the above-quoted portion of the claim; said date is merely the date the original request was made, and for the petitioner to now claim a retroactive date to July 19, 1945 insofar as the performance of the work involved is concerned, is not only improper but actually is incapable of accomplishment. What the petitioner is endeavoring to attain by claiming a retroactive effective date is not understood, and therefore the petitioner should be required to clarify the meaning and purpose of the language used in the (b) portion of the claim.

CONCLUSION: The carrier submits that it has established that the claim in this docket is entirely without basis and therefore respectfully submits that it should be denied.

OPINION OF BOARD: It is to be noted that the claim demands:

> "that the carrier shall now **return** to the Los Angeles Division of train dispatchers for train dispatching purposes that part of the Los Angeles Division known as the Calexico Sub-Division. . . ." (Emphasis supplied.)

As a matter of fact the work of dispatching trains on that Subdivision has been performed by dispatchers of Inter-California Railway Company since March 7, 1921. That company operates lines situated exclusively in Mexico and maintains a Dispatchers Office at Mexicali, from which, since the date mentioned, train orders for the Calexico Division of the Carrier have emanated. This arrangement antedates the first agreement entered into between the Carrier and the Organization; and was a situation of which the Organization was fully cognizant when the agreement was negotiated in 1923. The Organization then made no suggestion that any change be made in the method of handling dispatching work on the Calexico Subdivision.

Four different agreements were subsequently executed by the Organization and the Carrier—the last effective October 1, 1937. The method of handling dispatching work on the Calexico Subdivision was not challenged by the Organization in the negotiations leading up to any of these agreements. Indeed, not until July 1945 did the Organization make any contention that such work fell within the scope rule of any of the agreements.

Obviously the work cannot be **returned** to employes covered by the agreements for it has never been performed by employes covered by the agreements. And, we think under the undisputed facts, it cannot be held that the dispatching work on the Calexico Subdivision at any time fell within the scope rules of the agreements executed by the Carrier and the Organization.

This Board has been confronted with similar situations several times. See Awards Nos. 383, 389, 1257, 1568, 1609. What was said in Award No. 389 is peculiarly pertinent to the facts presented here:

> ". . ., the request of the employes cannot be granted without alteration by this Board of the scope of the agreement between the parties, which is beyond the bounds of its authority. The positions here involved were in existence prior to the negotiation of the prevailing agreement, and might well have been covered by that agreement, but in point of fact they were not included within its terms. . . . It is not within the authority of this Board to alter the terms of an agreement either by including positions not covered thereby or by excluding positions embraced therein. The end here sought by the employes can properly be achieved only through the process of negotiation."

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 parties waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 no violation of the Agreement is established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1947.