

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Southern Pacific Company (Pacific Lines), hereinafter referred to as "the Carrier," violated the currently effective Agreement between the parties to this dispute, including Article 1 Sections (a) and (c) of the current Agreement when, on Wednesday, July 7, 1954, it required or permitted Assistant Trainmaster H. L. Johnson, an employe not covered by that Agreement, to be primarily responsible for the Eastward movement of Engine 1464 from Saco to Bakersfield.

(b) Carrier shall now compensate Extra Train Dispatcher L. R. Poore, an available and qualified extra train dispatcher, a day's pay at pro rata rate, for Wednesday, July 7, 1954, a day that he was deprived of train dispatcher work to which he was contractually entitled, under the Rules of the Agreement, but which instead was performed by H. L. Johnson.

EMPLOYEES' STATEMENT OF FACTS: There exists an Agreement between the parties to this dispute effective April 1, 1947, on file with your Honorable Board and by this reference is made a part of this submission as though fully set out herein.

The Agreement effective April 1, 1947, among other rules, contains the following:

"Agreement between the Southern Pacific (Pacific Lines) and its train dispatchers represented by the American Train Dispatchers Association.

"Article 1—Section (a). SCOPE:

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

"This class shall include chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control

representative of management in the situation here involved; it is necessary in a properly administered organization that his instructions be complied with by the employees involved, and these instructions did not contravene the Train Dispatchers' Agreement in any way.

Award No. 6885, cited by the petitioner, involves an entirely different situation and does not in any respect support the claim submitted.

The petitioner is simply attempting to secure through an award of this Division a new agreement provision and penalty over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that, within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential factual situation here presents for consideration the same problems that confronted us in Award 7575 simultaneously decided.

Here an Assistant Trainmaster, not covered by the same Agreement and Memorandum of Understanding considered in Award 7575, made himself primarily responsible for a move of Engine 1464 and its caboose from Saco to Bakersfield, partly on main line track (2.8 miles) and partly within yard limits, by "flagging".

The Employees' position here is the same as set forth in Award 7575 and the Carrier maintains the same defenses absent any attempt for justification by reason of emergency.

In view of the conclusions set forth in our Award 7575 this claim must be sustained. We do not deem it material that the work removed from the Agreement appears to be limited in amount. Whether it be limited or substantial is not controlling—the fact that work was removed is what is material.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.

DISSENT TO AWARD NO. 7576, DOCKET NO. TD-7634

We dissent here with respect to the imposition of a claim for a "penalty" or "fine" for the reasons outlined in our dissent to Award No. 7575, Docket No. TD-7633.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. F. Mullen