

Award No. 7628

Docket No. TD-7794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 and continues to violate Article 1, Section (c) of the currently effective Agreement between the parties to this dispute when it required employes not covered by that Agreement, to be primarily responsible for the movement of Eastward Third Class and Extra Freight Trains from San Jose Yard to Coyote and Westward Third Class and Extra Freight Trains from Watsonville Junction to Logan, located on its Coast Division, to wit, Gilroy Subdivision.

(b) During a period beginning 11:00 P. M., Tuesday, July 21, 1953, ending 7:00 A. M., Wednesday, July 22, 1953, for the violation referred to in paragraph (a) hereof, Carrier shall now compensate Extra Train Dispatcher R. W. Wolf a day's pay at pro rata rate (a regularly established tour of duty day) for the movement of Eastward freight trains between San Jose Yard and Coyote and the movement of Westward Freight Trains between Watsonville Junction and Logan, train movements which were not authorized by train dispatchers and identified in Employees' Statement of Facts.

(c) During a period beginning 7:00 A. M., Wednesday, July 22, 1953, ending 7:00 A. M., Monday, August 3, 1953, in the absence of Extra Train Dispatchers, Carrier shall now compensate the senior available regularly assigned Train Dispatchers, hereinafter specifically named, (one for each of three 8-hour periods of each calendar day) identified in this paragraph (c), a day's pay at pro rata rate (a regularly established tour of duty day) for the dates hereinafter specifically named in this paragraph (c), for the movement of Eastward Freight Trains between San Jose Yard and Coyote and for the movement of Westward Freight Trains between Watsonville Junction and Logan, train movements which were not authorized by train dispatchers and identified in Employees' Statement of Facts.

Senior Qualified Available Regularly Assigned Train Dispatchers:

Third Trick	11:00 PM	until	7:00 AM	July	24, 1953	—E. S. Mitchell
Third Trick	11:00 PM	until	7:00 AM	July	25, 1953	—E. S. Mitchell
Third Trick	11:00 PM	until	7:00 AM	July	26, 1953	—D. B. Saunders
Third Trick	11:00 PM	until	7:00 AM	July	27, 1953	—D. B. Saunders
Third Trick	11:00 PM	until	7:00 AM	July	28, 1953	—H. D. Home
Third Trick	11:00 PM	until	7:00 AM	July	29, 1953	—H. D. Home
Third Trick	11:00 PM	until	7:00 AM	July	31, 1953	—E. S. Mitchell
Third Trick	11:00 PM	until	7:00 AM	August 1, 1953	—E. S. Mitchell	
Third Trick	11:00 PM	until	7:00 AM	August 2, 1953	—D. B. Saunders	
First Trick	7:00 AM	until	3:00 PM	July	22, 1953	—E. D. Spence
First Trick	7:00 AM	until	3:00 PM	July	23, 1953	—E. D. Spence
First Trick	7:00 AM	until	3:00 PM	July	24, 1953	—G. T. Forsyth
First Trick	7:00 AM	until	3:00 PM	July	25, 1953	—G. T. Forsyth
First Trick	7:00 AM	until	3:00 PM	July	27, 1953	—R. C. Furstenburg
First Trick	7:00 AM	until	3:00 PM	July	28, 1953	—M. S. Olsen
First Trick	7:00 AM	until	3:00 PM	July	30, 1953	—E. D. Spence
First Trick	7:00 AM	until	3:00 PM	July	31, 1953	—G. T. Forsyth
First Trick	7:00 AM	until	3:00 PM	August 1, 1953	—G. T. Forsyth	
Second Trick	3:00 PM	until	11:00 PM	July	22, 1953	—J. M. Baggett
Second Trick	3:00 PM	until	11:00 PM	July	23, 1953	—F. W. Adams
Second Trick	3:00 PM	until	11:00 PM	July	24, 1953	—F. W. Adams
Second Trick	3:00 PM	until	11:00 PM	July	25, 1953	—H. C. Gorman
Second Trick	3:00 PM	until	11:00 PM	July	26, 1953	—O. L. Spaulding
Second Trick	3:00 PM	until	11:00 PM	July	27, 1953	—O. L. Spaulding
Second Trick	3:00 PM	until	11:00 PM	July	28, 1953	—J. M. Baggett
Second Trick	3:00 PM	until	11:00 PM	July	29, 1953	—J. M. Baggett
Second Trick	3:00 PM	until	11:00 PM	July	30, 1953	—F. W. Adams
Second Trick	3:00 PM	until	11:00 PM	July	31, 1953	—F. W. Adams
Second Trick	3:00 PM	until	11:00 PM	August 1, 1953	—H. C. Gorman	
Second Trick	3:00 PM	until	11:00 PM	August 2, 1953	—R. C. Furstenburg	

(d) Subsequent to 7:00 A. M., Monday August 3, 1953, and until the violation cited in paragraph (a) hereof ceases, Carrier shall compensate the available Extra Train Dispatcher located on Carrier's Coast Division and in the absence of an Extra Train Dispatcher shall compensate the senior available assigned train dispatcher in its San Francisco, California train dispatching office one day's pay at trick train dispatchers' pro rata rate for the movement of Eastward Freight Trains between San Jose Yard and Coyote and for the movement of Westward Freight Trains between Watsonville Junction and Logan. Train movements which were not authorized by train dispatchers and identified in Employees' Statement of Facts.

EMPLOYEES' STATEMENT OF FACTS: Eight (8) consecutive hours constitute a tour of duty for each train dispatcher position. Assignments in Carrier's San Francisco Office on Tuesday, July 21, 1953, and subsequent to July 21, 1953, were and are as follows:

First Tricks 7:00 A. M. until 3:00 P. M.

Second Tricks 3:00 P. M. until 11:00 P. M.

Third Tricks 11:00 P. M. until 7:00 A. M.

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 it were fully set out herein.

OPINION OF BOARD: The confronting dispute involves the American Train Dispatchers Association and the Southern Pacific Company (Pacific Lines). It is alleged that Article 1 (c) of the effective Agreement and a Memorandum of Understanding interpreting and construing this portion of the Agreement, was violated when it (the respondent) permitted, assigned or required Employees not covered by the Agreement to be primarily responsible for train movements on a certain portion of this property.

The pertinent portion of Article 1(c) provides:

“... shall be primarily responsible for the movement of trains by train orders or otherwise;...”

The above mentioned Memorandum of Understanding, bearing date of Sept. 13, 1937, interprets and construes this primary responsibility mentioned in Article 1 (c) to apply to Dispatchers, as follows:

“... regardless of the method employed...”

The locale of this dispute is the “Gilroy Subdivision” and concerns the movement of Third Class and Extra trains Eastward between San Jose yard and Coyote and Westward between Watsonville Junction yard and Logan. There is approximately 16 miles of trackage between the first mentioned points of which some 7 miles is outside the yard limits of San Jose. The trackage between the latter points is approximately 7 miles with 3 miles of such being outside the yard limits of Watsonville Junction.

The record indicates that prior to June 29, 1953 all movements between these points were accomplished by securing necessary clearance cards and train orders. On this date there were issued bulletin instructions which were later placed in the operating timetables, to the effect that all Easterly movements out of San Jose yard and all Westerly movements out of the Watsonville yard were to proceed on yardmaster's instructions. Some movements proceeded by “illuminated Letter M indication” changed when necessary, with use of clearance cards and train orders under certain circumstances.

The record further discloses that the questioned new method of operation was abandoned on Easterly movements out of San Jose yard on April 4, 1954; thus this claim, if meritorious, would only be valid between July 22, 1953, the first claimed date, and April 4, 1954, at this point.

The Organization asserts that the work here assigned to Employees (Yardmasters) not covered by the Agreement is of the type and character historically and customarily performed by Dispatchers and here is covered specifically by Article 1(c) of the Agreement and the interpretation placed thereon by the Memorandum of Understanding; and further that in directing that the movement be made on order and instruction of Yardmaster the Carrier was improperly removing the “primary responsibility” for such movements from the jurisdiction and supervision of Dispatchers, they being the only ones who can issue clearance cards and train orders.

The Respondent counters with the contention that there is no provision in the effective agreement that restricts its right to regular train movements through instructions and directions of yardmasters when operating rules are followed. It was pointed out that the operations here questioned were made by the yardmaster who received “oral authorization” from the Dispatcher, such authorization being relayed to him (the yardmaster) by a telegrapher in accordance with a long existing custom and practice; it was further asserted that in view of the fact that Dispatchers were on duty at all times there was no loss of work which justifies the imposition of a penalty.

This Board has held, and we adhere to the well established rule that switching and train crews can move and operate engines and trains within designated yard limits on authorization and under the direction of yardmasters and without orders or instructions from Train Dispatchers, however, in this instance, it is clear that train movements were made on instructions of the yardmaster at both of the points in question, that is between San Jose and

Coyote and between Watsonville and Logan. These movements transgressed the yard limits of both points.

We are of the opinion and so find and hold that Article 1 (c) of the effective agreement and the Memorandum of Understanding which sets forth the mutual interpretation and application of this rule has the effect of delegating primary responsibility for train movements of this type to Train Dispatchers, otherwise the designation of such responsibility as covered in the expression "by train orders" or otherwise would be rendered meaningless. This is likewise true of the statement . . . **regardless of the method employed** . . . which appears in the aforementioned Memorandum of Understanding. It is the kind or character of work not the manner of its performance which is here controlling. The rules, Memorandum of Understanding and the controlling principle present here were before this Board and disposed of on well reasoned grounds in Awards 6885, 7575 and 7576. Each involved the parties hereto. Prior Awards of this Board, absent strong and compelling reason, should not be lightly considered and carelessly tossed aside.

It having been found that the agreement was violated, a penalty for such violation is justified. Otherwise the sanctity of the agreement cannot be upheld and violation thereof discouraged.

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 in accordance with the Opinion.

AWARD

Claims sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1957.

DISSENT TO AWARD NO. 7628, DOCKET NO. TD-7794

Reference is here made by the majority to Award 7575.

What we stated in our dissent to Award 7575, the undersigned reiterate here because the instant Award is also in serious error with respect to its interpretation of the applicable rules as applied to the Facts of Record, and unsound with respect to the imposition of a "penalty" or "fine".

For the foregoing reasons, we dissent.

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

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 2 to Award No. 7628

Docket No. TD-7794

NAME OF ORGANIZATION: American Train Dispatchers Association.

NAME OF CARRIER: Southern Pacific Company (Pacific Lines).

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

We are here requested to make a second interpretation of our Award 7628 for the reason that neither the Award nor the initial Interpretation thereof is clear or definite as to the extent or duration of the violation which we therein found to exist.

Both parties have filed voluminous statements and numerous exhibits which contain evidence that was not presented by either party prior to the time the record on which the award was based was closed. We must here again, as we have on other occasions, find and hold that such evidence is not subject to consideration. This being true, we must again reiterate that we found (1) that the Carrier's actions at both San Jose—Coyote and Watsonville—Logan were violative of the Agreement; (2) that reparations for such violations were proper; (3) that such reparations were payable on the San Jose—Coyote phase of the dispute between July 22, 1953 and April 4, 1954; (4) that insofar as the Watsonville—Logan phase of the dispute was concerned reparations were justified and payable from the inception of the violation to that time when such violation ceased.

It was the thinking of the Board that the record indicated the parties could best determine the extent of the violation at Watsonville—Logan and the amount of the reparations due.

In effect the Organization now asks that we force compliance with our award. Under the Railway Labor Act the scope of our authority is limited. We consider disputes and make awards. Compliance with the awards was expected and presumed by the framers of this Act and enforcement powers were not vested in this Board.

Referee Livingston Smith who sat with the Division, as a member, when Award No. 7628 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1958.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 7628

Docket No. TD-7794

NAME OF ORGANIZATION: American Train Dispatchers Association.

NAME OF CARRIER: Southern Pacific Company (Pacific Lines).

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Opinion, Findings and Award of the Board in this matter are clear, definite, concise and without ambiguity.

In essence we found that certain train movements in an Easterly direction between San Jose-Coyote and certain Westerly Movements between Watsonville-Logan conducted on authorization, and under the direction of Yardmasters, and without orders or instructions from Train Dispatchers, transgressed the Yard Limits at each of the named points, and were violative of the agreement.

The granting of reparations for that period, between July 22, 1953 and April 4, 1954, insofar as the San Jose-Coyote phase of the dispute was concerned, was predicated on evidence of record that the complained of method of operation occurred only during this period of time.

Insofar as the Watsonville-Logan phase of the dispute was concerned, the Board found, in brief, that reparations were due and payable commencing with the first date claimed, and continuing thereafter for so long as such violative operations continued. The parties are in a position to determine the extent and duration of the violation at Watsonville-Logan.

Referee Livingston Smith who sat with the Division, as a member, when Award No. 7628 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1958.