

Award No. 9824

Docket No. TD-9192

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY COMPANY

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

(a) The Southern Railway Company, hereinafter referred to as the "Carrier," violated Article 1(b-2) of the currently effective agreement between the parties when, on the morning of October 18, 1955, it permitted employes not subject to the train dispatchers' Agreement to direct train movements over main track territory of the Carrier by the use of two-way radio without the authority and direction of the train dispatcher, and without the knowledge of the train dispatcher on duty.

(b) The Carrier shall now compensate Train Dispatcher R. T. Cash, employed in the Greenville, S. C., dispatching office of the Carrier, for one minimum day's pay at the trick train dispatcher rate for October 18, 1955.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Southern Railway Company and its train dispatchers, represented by the American Train Dispatchers Association, effective September 1, 1949, and subsequent revisions thereof are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein. Said Agreement will hereinafter be referred to as the "Agreement".

Pertinent rules of the Agreement read as follows:

"ARTICLE 1

(a) Scope

The term 'train dispatcher', as hereinafter used, shall include night chief, assistant chief, trick, relief and extra dispatchers. It is agreed that one (1) chief dispatcher on each division shall be excepted from the provisions of this agreement.

(b) Definitions

2. Trick Train Dispatchers

"This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by

was not in violation of paragraph 2 of Article 1 (b), captioned "Definitions," of the effective Train Dispatchers' Agreement here in evidence, as alleged. Not by any stretch of the imagination did such operation validate the monetary claim which the Association is here attempting to assert.

CONCLUSION

The Carrier has shown that:

(1) Claim which the Association is here attempting to assert is not only ridiculous, silly and without any basis whatsoever, but is not supported by paragraph 2 of Article 1 (b) of the effective Train Dispatchers' Agreement in evidence. That paragraph does not constitute a classification of work rule, as alleged by the Association, but even if it were such a rule, which it is not, the plain language used therein does not support any of the Association's contentions.

(2) Train movements of the type here involved have been made from time immemorial without authorization of trick train dispatchers, and without the dispatchers or the Association ever heretofore having raised any question with respect to such train operations. This fact is fully supported by affidavits attached to and made a part of the record here presented.

(3) Movements of train No. 35 and extra 4223 South on the date here involved were fully authorized by Carrier's Operating Rules and instructions, but even if they had not been so authorized, the operation was sanctioned by the management, and no provision contained within the four corners of the Train Dispatchers' Agreement here in evidence conferred upon trick train dispatchers or the Association the right to question such movements. The operation of trains is a managerial function. The Association has no voice in the matter.

(4) Use of radio by the crews on trains 35 and extra 4223 South did not violate any provision of the Train Dispatchers' Agreement. Moreover, no monopolistic rights to communicate by telephone, radio, or otherwise, have been conferred upon trick train dispatchers or others, and the Board is without any authority whatever to make an award restricting use by the Carrier of radio, telephone or any other means of communication.

The claim being silly, ridiculous and without any basis whatsoever, the Board cannot do other than deny it.

All pertinent data used in this submission have been made known to employe representatives.

Carrier, not having seen the Association's submission, reserves the right, after doing so, to make appropriate response thereto and present any additional facts or evidence which to it may be necessary.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The pertinent facts of this case are not in dispute. Passenger Train No. 35 was scheduled to operate southward from

Salisbury to Greenville, South Carolina, leaving at 10:30 P. M. and arriving at 2:35 A. M. On October 18, 1955, Extra 4223 South was en route from Salisbury to Greenville with ninety loads and twenty-one empties when, just south of Duncan, the train parted at the second car ahead of the caboose. While recoupling the train a drawbar was broken on the ninth car from the engine, making it necessary to set the car out at Greer. When the train parted the flagman protected the rear of the train in accordance with Operating Rule 99, and the head brakeman accompanied the head end of the train to Greer to set out the defective car. While this was taking place Train No. 35 approached Extra 4223 South from the rear and was flagged at Duncan by the flagman from Extra 4223, who was also sent out in accordance with the Operating Rules. A discussion was held by radio communication between the crews on Train No. 35 and Extra 4223 in which it was agreed that No. 35 would cross over from the southbound main to the northbound main at Duncan and proceed past Extra 4223 over northbound main, returning to the southbound main through the crossover at M. P. 470.9, and that the head brakeman from Extra 4223, who was at Greer, would provide the necessary flagging and hold any northbound train that might approach.

The movement of these trains in this manner and under these circumstances led to the filing of the claim which is now before the Board. The Organization claims that the Carrier violated the Scope Rule of the Agreement, particularly Article 1, (b), Paragraph 2, which language defines the position of the Trick Train Dispatcher.

"This class shall include positions in which the duties of incumbents are to be **primarily** responsible for the movement of trains by train order, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work." (Emphasis ours.)

It cannot be denied that, by definition, the primary responsibility of train dispatchers is that of directing the movements made by trains. However, we cannot read into the language of Article 1, (b) 2 of the parties' Agreement any grant of **exclusive** authority to direct all train movements, regardless of circumstances. The situation with which we are concerned in this case was one of an emergency. The Carrier obviously acted in good faith. Carrier did not limit or restrict the responsibility of the train dispatcher, since one was on duty on the date in question. We see in this action no threat to the integrity of the Scope Rule in the parties' Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 15th day of February 1961.