

Award No. 9829

Docket No. TD-9197

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 November 4, 1955, it permitted persons, not subject to the train dispatchers Agreement, to assume the primary responsibility to direct the movement of a train on the main track territory of the Carrier between Belmont, North Carolina, and Air Line Junction without the authority and direction of the train dispatcher on duty in the Greenville, South Carolina dispatching office of the Carrier.

(b) The Carrier shall now compensate the train dispatcher in the Greenville, South Carolina office, who was contractually entitled to perform the direction of movement of said train, one minimum day's pay at trick train dispatcher rate for November 4, 1955.

(c) A joint check of the Carrier's time rolls (pay rolls) shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine the name of the train dispatcher, or train dispatchers, entitled to the payment required by paragraph (b) of this claim.

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 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."

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: On November 4, 1955, Carrier's Train No. 52, which was operating as Extra 4141 North and en route Greenville to Salisbury, had eighty-five loads and nineteen empties. At approximately 6:20 A. M., when near M. P. 387, some two miles north of Belmont, a key came out of a drawbar on a car in the train, causing the derailment of five cars.

Following the derailment, Extra 4141 North proceeded with the head end of the train to Air Line Junction (M.P. 375.2) where the cars were set off and a derrick was picked up. The engine and wrecking outfit proceeded south on the southbound main, moving behind passenger Train No. 29, and providing flag protection according to the Operating Rules. At Juneau (M.P. 382.9) Extra 4141 crossed over from the southbound main to the northbound main where the derrick was placed on the south end of the engine. After this the engine and derrick proceeded southward on the northbound main to M.P. 387, where the remainder of the train had the northbound main blocked. The northbound main being blocked by the derailment, no flagging was considered necessary under the Operating Rules, but the rear of the train was protected by automatic block signals and the automatic train stop system.

The first derailed car was rerailed and brought by the engine to Juneau, where it was set off in the clear, after which Extra 4141 with the derrick returned to the scene of the derailment on the southbound main under flag protection where the remaining cars were rerailed. Extra 4141 then took the derrick to Juneau on the southbound track, crossed over to the northbound track and returned south on northbound track to M.P. 387, where it coupled onto the rerailed and other cars to the rear of the train and proceeded northward to Charlotte.

In the meantime the Train Dispatcher issued train order No. 36. But this was not needed since Extra 4141 North would be furnishing flag protection between Belmont (M.P. 389.1) and Juneau (M.P. 382.9), while handling the derrick between Air Line Junction and the scene of the derailment. The dispatching force knew that Trains 36 and 137 had run around the derailed cars at M.P. 387 by using the southbound main and returning to the northbound main at Juneau.

Carrier admits that there was a technical violation of its Operating Rule 1141 in that Extra 4141 failed to secure a clearance card upon returning from Air Line Junction to M.P. 387, but in view of the emergency situation we can see little reason for assessing a penalty or holding that there was a violation of the Scope Rule of the parties' Agreement. See Awards 9824 to 9828 inclusive, involving the same parties and the same provisions of the 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.