

Award No. 13736
Docket No. TD-15229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter referred to as "the Carrier"), violated and continues to violate the effective Agreement between the parties, Article 1(a), (b) and (c) thereof in particular when, beginning July 26, 1963, the Carrier has required and permitted employees not within the scope of the Agreement to be primarily responsible for the movement of trains between Fairlawn and Tower Grove, Missouri.

(b) The Carrier be required to compensate Extra Train Dispatchers C. E. Roberts, J. F. Moore, W. L. Horine, R. L. Roach and E. W. Wyatt for each day on and after 12:01 A. M. December 7, 1963 on which the respective individual claimants were available, in seniority order, to perform the service referred to in paragraph (a) above, such compensation to continue until the violations cease.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, copy of which is on file with this Board. Said Agreement is by reference incorporated into this submission the same as though fully set out herein. For ready reference, Article I(a), Article I(b)2 are here quoted in full, and Article V-A in pertinent part:

"ARTICLE I.

SCOPE

(a) This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement.

amount is specified. The Organization states that the Carrier be required to compensate five named train dispatchers for each day on and after 12:01 A. M. December 7, 1963, on which the respective individual claimants were available, in seniority order, to perform the service referred to in Paragraph (a). Neither the Carrier nor this Board should be required to resort to speculation and conjecture to determine the monetary amount claimed, or, in the event the claim is sustained, how such amount should be apportioned among the claimants.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that: (1) Carrier extended its CTC system to the territory between Fairlawn and Tower Grove, Missouri; (2) the extended part of the system, beginning July 26, 1963, was operated by telegraphers, who exercised primary responsibility for the movement of trains between the aforementioned points; and (3) the exercise of primary responsibility for the movement of trains is by agreement exclusively vested in train dispatchers.

Carrier denies the extension of its CTC system as alleged by Dispatchers. It avers that: (1) "On July 26, 1963, Tower Grove Interlocker located at Mile Post 3-20 poles was discontinued and the interlocking at that point was taken over and remotely controlled by telegraphers from Lindenwood Yard Office; and (2) primary responsibility for the movement of trains continued vested in dispatchers.

We need not resolve the conflicting evidence as to the signaling device that was operated by telegraphers. It is enough that the automated device, manned by telegraphers, activated signals which controlled the movement of trains.

When Petitioner, on the property, first raised issue concerning the operation of the device, the Carrier was notified that the control of movement of trains between the points involved was work which was historically performed by train dispatchers; and (2) demand was made that train dispatchers be assigned to operation of the device. But, from a reading of the record as a whole, the issue before us is whether Carrier violated the Dispatchers' Agreement in refusing to comply with a demand to issue and enforce instructions to the telegraphers that train dispatchers were primarily responsible for controlling the movement of trains. In denying the demand, Carrier admitted that the train dispatchers had the primary responsibility; denied that the manner in which the telegraphers were operating the device usurped the dispatchers' primary responsibility; and, asserted that existing operating rules made clear that dispatchers were primarily responsible for controlling the movement of trains. Therefore, the issue before us is whether in fact the telegraphers operated the device in a manner which usurped the dispatchers exclusive primary responsibility.

To prevail, Petitioner bears the burden of proving by evidence of record that telegraphers acted in a manner violative of the Dispatchers' Agreement. All we find in the record, bearing upon the issue, is a statement by Petitioner, unsupported by facts, that undisclosed acts by telegraphers were in violation of the Dispatchers' Agreement; and, a general denial by Carrier. Absent facts we cannot adjudge. Therefore, we will dismiss the Claim.

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 Claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1965.

LABOR MEMBER'S DISSENT TO AWARD 13736, DOCKET TD-15229

The majority erred in dismissing this claim for lack of proof.

The record discloses that statements of four (4) Train Dispatchers who worked the territory in question were presented to Carrier. Each statement stated that the Operators in question were not under the supervision of the Train Dispatchers; neither did such Operators request authorization or instructions relative to the movement of trains in the territory involved.

Carrier on the property did not deny, refute or defend against this allegation. Only in submission to the Board did they attempt to defend against this charge.

Additionally, the General Chairman attested to the fact that he had personally observed the performance of the work in violation of the agreement.

We, therefore, cannot agree with the observation expressed as follows:

"To prevail, Petitioner bears the burden of proving by evidence of record that telegraphers acted in a manner violative of the Dispatchers' Agreement. All we find in the record, bearing upon the issue, is a statement by Petitioner, unsupported by facts, that undisclosed acts by telegraphers were in violation of the Dispatchers' Agreement; and, a general denial by Carrier. Absent facts we cannot adjudge. Therefore, we will dismiss the Claim."

The Employees have met the necessary burden of proof to sustain the claim, and the majority should have so held. For this and other reasons, Award 13736 is incorrect, and dissent thereto is hereby registered.

R. H. Hack
Labor Member