

Award No. 14219
Docket No. TD-15286

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, 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 the effective schedule agreement between the parties, Article 1(a), (b) and (c) thereof in particular, and the terms of a Memorandum of Agreement between the parties entered into on October 25, 1962, when it required and/or permitted employes and/or officers of the Quanah, Acme and Pacific Railway Company to perform work within the scope of the said agreements.

(b) The Carrier be required to compensate the individual claimants herein named one day's compensation at pro rata applicable rate because of said violations, as follows:

Extra Dispatcher B. F. Steel for October 25, November 12 and November 28, 1963, at rate of Assistant Chief Dispatcher, and October 29, 1963, at rate of trick train dispatcher.

Extra Dispatcher I. E. Talley for November 15, November 20, December 4, December 12, December 16, December 26, 1963, and January 9, 1964, all at rate of Assistant Chief Dispatcher.

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 1(a), (b) and (c) are quoted in full:

"ARTICLE 1. SCOPE

(a) This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher'

CARRIER'S STATEMENT OF FACTS: The Carrier's Southwest District comprises four operating divisions, namely: Southwestern, Red River, Central, and Western Divisions. The headquarters of the Southwest District is located at Tulsa, Oklahoma.

Train dispatching service for the Southwestern, Red River, and Western Divisions and the Arkinda-Ardmore Sub-division of the Central Division is performed in the Tulsa office. Additionally, the Tulsa office performs train dispatching service on the Quanah, Acme and Pacific Railway Company, hereinafter, for convenience, referred to as the "QA&P."

The QA&P connects with this Carrier's Southwestern Division west of the Red River at Quanah, Texas and extends in a southwesterly direction to Floydada, Texas, a distance of approximately 110 miles wholly located within the State of Texas.

The Organization charges in Item (a) of its Statement of Claim that the Carrier on certain specified dates—eleven in number—violated Article I of the general rules agreement and the terms of a Memorandum of Agreement between the parties dated October 25, 1962 when it required and/or permitted employes and/or officers of the QA&P to perform work within the scope of the general rules agreement.

OPINION OF BOARD: In their October 25, 1962 Memorandum of Agreement the parties, along with Quanah, Acme and Pacific Railway Company and The Order of Railroad Telegraphers, provided in Section 2 that, effective with the date of coordination of the two railroads, "train dispatching service for both Carriers will be performed by Frisco Train Dispatchers in its Tulsa Train Dispatching Office under the rules of the Agreement governing the hours of service and working conditions between Frisco and Frisco System Division, American Train Dispatchers Association." The Scope Rule (Article 1) of the ATD Agreement contains this definition in section (b):

"1. Chief, night chief and assistant chief dispatcher positions:

These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

On January 20, 1964 Petitioner's General Chairman submitted claims on behalf of Extra Dispatchers Steel and Talley for a day's pay for certain specified days in October, November, and December 1963 and January 1964. The General Chairman stated in relevant part: "To each of these time claims are attached the supporting papers. . . . These are violations of Article 1(a) (b) and (c) of the current agreement and started from the first day of the Coordination November 1, 1962, and have continued daily from that date. . . ." Carrier Superintendent's February 5, 1964 denial stated in part: "I do not see wherein there was a violation of any of the provisions of the agreement to which you refer; in fact, do not find any handling in these instances that was in violation of Article 1(a), (b) and (c) . . ."

In his March 4, 1964 Appeal, Petitioner's General Chairman noted in part, with respect to the Coordination agreement, that:

"At the time this proposed agreement was discussed in conference with all parties present that all of the work then performed by the QAP Chief Dispatcher at Quanah would be transferred to the Chief Dispatchers office at Tulsa. It was specifically stated that it was understood that the distribution of power and equipment would be handled from the office as prescribed in the agreement.

For the past sixteen months practically all of that work is still being performed by Mr. Adams, titled Superintendent Terminals Quanah, . . ."

It is clear that train dispatching work, including the task of supervising "the handling of trains and the distribution of power and equipment incident thereto," belongs to Dispatchers. Included among Dispatchers' duties are the issuance of orders for the movement (distribution) of trains and cars. Preliminary decisions concerning how many cars should be moved to what location, however, are made by others.

The question here is whether Superintendent G. Adams or other employees at Quanah issued orders for the Distribution of cars or performed other work belonging to Dispatchers. The evidence (as distinct from assertions) concerning the actual work performed by non-Dispatchers at Quanah which Petitioner presented on the property consisted of (1) the time claims, and (2) "supporting paper." We have no knowledge of what was contained in these "supporting papers" since they were not submitted to the Board. What, then, of the time claim evidence?

Claimant Steel's October 25, 1963 Time Claim for \$31.32 states:

"1:25 P. M. Agent at Acme Texas called Supt. Terml. Adams at Quanah and ordered empty equipment for loading at that station as well as discussing future requirements."

But this is evidence only of a conversation during which Superintendent Adams received information concerning the need for certain equipment at Acme. Significantly, it does not reveal what Mr. Adams did with this information, whether he passed it on to the Tulsa dispatching office, or who ultimately ordered the cars or supervised "the handling of trains and distribution of . . . equipment." In fact, on the property Carrier denied any improprieties.

This evidence, consequently, is inconclusive. Additionally, if the gathering of information was work which, by custom, practice, or mutual contract interpretation, belonged exclusively to Dispatchers, the evidence to establish that fact is not contained in the record here.

What has been said above also applies to Claimant Steel's Time Claims of November 12 and 28, 1963, and Claimant Talley's Time Claims for November 15 and 20, December 4, 12, 16 and 26, 1963. However, Mr. Steel's October 29, 1963 Time Claim provides more precise information. It cites a telegram sent at 1:57 P. M. from Quanah to Paducah by "GA," stating: "Work Extra 505 at Paducah, Texas. Bring empty hoppers and flats to Quanah for No. 36 through." Similarly, Mr. Talley's January 9, 1964 Time Claim contains this statement: "2:00 P. M. Phone Conversation. G. Adams at Quanah ordering empty cars from Neighbors at Springfield to fill orders at Acme. 3:20 P. M. Telegraph Operator at Quanah distributing empty cotton cars to Roaring

Springs and Floydada." These claims contain sufficient evidence to warrant the conclusion that Quanah's Superintendent Adams, on these two occasions, was performing work which belonged to Tulsa Dispatchers. No facts in Carrier's presentations on the property serve to refute these claims. Accordingly, Petitioner's claim in Part (a) will be sustained to this limited extent.

As for the claim for compensation in Part (b), there is no justification for a full day's pay since it is apparent that the work involved in the two Time Claims was not extensive. We shall order Claimants to be compensated "on the basis of three hours for two hours' work or less" in accordance with Article II, Section 3.

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 and the October 25, 1962 Memorandum of Agreement were violated on October 29, 1963 and January 9, 1964.

AWARD

Claim in Part (a) sustained to the extent indicated above. Claim in Part (b) sustained only to the extent that Claimants B. F. Steel and I. E. Talley shall be compensated on the basis of three hours' pay for two hours work or less, Mr. Steel for October 29, 1963, and Mr. Talley for January 9, 1964.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1966.