

Award No. 18457

Docket No. TD-18865

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 "the Carrier") violated the effective Agreement between the parties, Article 1 thereof in particular, when on June 4, 1969 it required and/or permitted other than those covered thereby, to perform work covered by said Agreement.

(b) Carrier shall not compensate Train Dispatcher W. A. Moore one day's compensation at time and one-half the daily rate applicable to Assistant Chief Dispatcher for said violation on the rest day of Claimant.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Ex Parte Submission as though fully set out herein.

Article I — Scope is identical in the Agreement effective September 1, 1949, revised as of January 1, 1953, and again revised effective October 1, 1965, insofar as the rules material to this dispute are concerned.

For the Board's ready reference, Article I, Scope, of the Agreement is here quoted in full text:

"ARTICLE I

(a) SCOPE

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.

Note (1): Positions of excepted chief dispatcher will be filled by employees holding seniority under this agreement.

the alleged occurrence and for the additional reasons that no work Extra 510 operated on the claim date and the designated claimant is not the real party in interest even if the claim were otherwise meritorious. Copy of the Carrier's declination letter November 19, 1969 is attached hereto as Carrier's Exhibit No. 36.

CLAIM 37

This claim was presented on the following reported Statement of Facts:

At 10:35 A.M., June 17, 1969, Mr. C. E. Hurt, Trainmaster, Quanah, Texas, instructed No. 31 to set out two (2) cars at Olustee and do some spotting of the elevator.

No. 31 did as was instructed.

The various reasons given for declination of this claim are set forth in the Carrier's declination letter November 19, 1969, copy attached as Carrier's Exhibit No. 37.

CLAIM 38

This claim was presented on the following reported Statement of Facts:

At 9:10 A.M., June 17, 1969, Mr. C. E. Hurst, Trainmaster, Quanah, Texas, instructed train No. 31 at Snyder, Oklahoma to bring what he has handy to Quanah. If possible bring 10 mty covered hoppers and 2 mty box.

No. 31 did as instructed.

The various reasons given for the declination of this claim are set forth in the Carrier's letter November 19, 1969, copy attached as Carrier's Exhibit No. 38. The trainmaster who is alleged to have committed the violations in Claims 37 and 38 is one of the division officers who, as such, has responsible control over the operation of a division, or a terminal, or of a major activity within an operating division, and when acting in the discharge of his duties and responsibilities, it is not mandatory that a division trainmaster exercise such responsible control only through employees of the train dispatchers' class, nor do the Rules of the Train Dispatchers' Agreement place such a hindrance or limitation upon him.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees allege that on June 4, 1969 the following conversation took place on dispatchers' telephone between the Agent at Olustee, Oklahoma, Agent, Altus, Oklahoma and Trainmaster C. E. Hurt, Quanah, Texas:

"Agent — I've got some more boxes coming down today and will give you four XH from Altus.

Trainmaster to Agent, Altus, Oklahoma: List four XH to Olustee, three to Eldorado move No. 31 today.

Trainmaster to Agent Olustee, Oklahoma: List 2 bad order mty
hoppers to Tulsa. Don't put your empties on No. 36 put them on No.
32. Then instructed Eldorado to have No. 31 do your switching."

While the Carrier states that it has no record of this conversation, we
shall assume that it did take place and that the instructions were carried out.

Employees contend that the conversation contained a train order when
the Trainmaster "instructed Eldorado to have No. 31 do your switching." But
this message was not from the Trainmaster to the No. 31 train crew. It was
merely a conversation between the Trainmaster and the Agent at Olustee,
Oklahoma. It is not shown in the record who issued the switching instruction
to the train crew. For all we know the Agent at Olustee may have communi-
cated his instructions to the Dispatcher, who in turn issued an order to the
train crew. In any event, the conversation between the Trainmaster and the
Agent at Olustee was neither a train order nor a communication of record.
It was not a direct order involving the movement of Train No. 31.

A conversation between two employes or between two supervisors or
between a supervisor and an employe concerning the use or distribution of
equipment is not ipso facto a "handling of trains and distribution of * * *
equipment." It is not so when, as here, the conversation was informational
and preliminary to the actual message for the handling and distribution of
the equipment. This conversation did not violate the Scope Rule.

FINDINGS: The Third Division of the Adjustment Board, upon the whole
record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respec-
tively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.