Award No. 18567
Docket No. TD-18873

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 May 30, 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 A. H. Taff 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.

EMPLOYES' 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 expected from the scope and provisions of this agreement.

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

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. Hurt, 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 employes 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: Employes have alleged that "on May 30, 1969 a party at Enid, Oklahoma, not covered by the Agreement, issued instructions to Train No. 661 to pick up empties at Mount Park, perform certain work at Frederick and Davidson as well as Bessie." The General Chairman's original claim filed on July 23, 1969 says:

"This train did perform the work outlined above as instructed at Enid, Oklahoma."

The Superintendent replied thereto and said:

"The Statement of Facts in your above letter is vague and indefinite, does not reveal whether the alleged instructions were written or verbal, by whom issued, or whether such alleged instructions were acted upon by Train 661 * * *"

And on November 17, 1969 Carrier's highest designated appeal officer wrote, in part, as follows:

"This claim was denied, among other reasons, for vagueness and uncertainty. The record shows that you expressed dissatisfaction with the decision rendered by the Superintendent Transportation, but you

have not come forward with evidence to establish the claimed violations, and I am unwilling to accept unsubstantiated and undocumented representations as supplying required proof."

The only other evidence offered by Employe's is a self serving, handwritten note from the trick train dispatcher on duty which reads:

"May 30/69

Enid instructed 661 to P/U empties at Mount Park and take to Frederick and Davidson. Also to move certain cars from Bessie."

Even if this memorandum was not self serving and not a mere assertion, it, too, is vague and uncertain. Who issued the instructions at Enid? Employe's say it was some one "not covered by the Agreement." But how sure is this assertive statement? It is certainly not acceptable evidence to sustain a claim based upon an allegation that Carrier violated the Scope Rule.

The burden of proof is upon the Employes. If the trick train dispatcher on duty was so sure that instructions were sent why did he not know who sent them? And if the train crew did perform the work, it is even probable that they could have done it without explicit instructions. All probabilities aside, there is just not enough acceptable and convincing evidence upon which an affirmative award can be made. For the lack of such evidence, the claim must be dismissed.

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 respectively 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 invoved herein; and

That the allegations in Employes submissions are not sufficient to support a consideration and a determination of the merits of the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

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