

Award No. 18691
Docket No. TD-18883

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 11, 1969 it required and/or permitted other than those covered thereby, to perform work covered by said Agreement.

(b) Carrier shall now compensate Train Dispatcher R. C. Reddick 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.

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 1 — 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 1, 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.

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 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: On the claim date Trainmaster at Quanah, Texas issued the following message to the Operators at Quanah, Texas:

"Run No. 32 at 8:00 A. M. Hold No. 36 until 7:00 A. M. at Floy-dada to get the racks."

This is clearly a train order involving the movement of trains and is a message the direction of which belongs exclusively to Train Dispatchers under the Scope Rule.

Carrier contends that the Claimant has shown no loss of pay or that he is entitled to any compensatory damages. This is not an isolated claim wherein the Carrier inadvertently or because of unusual circumstances violated the Agreement. It is rather one of very many claims arising out of the consolidation of Carrier's dispatching offices. Many contract violations have arisen because of Carrier's persistent misinterpretation of the contract rules. To permit such violations to exist without imposing a penalty would be an open invitation to the Carrier to continue to violate the rules with impunity. That would be contrary to effectual enforcement of voluntary obligations.

No serious questions has been raised that R. C. Reddick is a proper Claimant. Since he did not actually perform any of the work found to belong to Dispatchers, he is entitled to recover one day's compensation at the straight time rate and not at overtime the daily rate.

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 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 Carrier violated the Agreement.

AWARD

Claim is sustained for one day's pay at straight time the daily rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1971.