



Award No. 18938

Docket No. TD-18885

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 10, 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. J. Morgan 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 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.

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 10, 1969 the Operator at Wichita Yard, a member of another class and craft, instructed the Operator at Fredonia, Kansas to give No. 337 a message to the effect that, if, there were 30 box cars at Beaumont to bring them to Wichita, Kansas on June 10, 1969. The Operator at Fredonia gave the instructions to Train 337 as instructed."

We held in Award No. 4 of Public Law Board No. 588 on this property that:

"A message instructing a train crew to pick up or set out cars is not work related to the duties of a Train Dispatcher nor is it incidental to the duties of a Chief, Night Chief and Assistant Chief Disptacher * * *"

We also said in Award No. 18593 that this is "not a message involving the movement of the train * * * nor does it involve the 'distribution of power and equipment' incidental to the supervision of the handling of that train * * *". Also see Awards 18689, 18690, 18692 and Awards 18, 22, 23, 25 and 26 of Public Law Board No. 588.

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 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 14th day of January 1972.

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