

Award No. 18942
Docket No. TD-18889

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:

(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 16, 1969 it required and/or permitted other than those covered there, to perform work covered by said Agreement.

(b) Carrier shall now compensate Train Dispatcher K. E. Kellett 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 (I): Positions of excepted chief dispatcher will be filled by employees holding seniority under this agreement.

(b) DEFINITIONS:

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

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 June 16, 1969, the Trainmaster at Enid, Oklahoma, W. H. Hulsey, issued the following instructions:

"Trainmaster W. H. Hulsey, Enid, Oklahoma, lined up to dead-head GP 557 and caboose 1128 on No. 638 to Perry to go to work at 10:00 A. M. with a deadhead crew also."

Although the Carrier has stated that there "is no confirmation in Carrier's records of the alleged advice or instructions," the record pretty well shows that the instructions were issued. A memorandum of the train dispatcher reads:

"6/16/69

WHH lined up to DH GP 557 and cab 1128 on No. 638 to Perry to go to work at 10:00 A. M. DH crew also. WHH instructed crew what to do and when to go to work — lined up YD to DH Unit — Cab & Crew."

The Trainmasters instructions definitely involves a "distribution of power and equipment" which, under the Scope Rule, belongs to Dispatchers. The instructions should have been issued through the Dispatcher. Carrier clearly violated the Agreement.

It is the position of the Carrier that the Claimant is not entitled to compensation at the time and one-half rate. If he had been called to perform the work he would have been paid for a call under Article II, Section (b) 3 of the Agreement.

The identical issue was before Public Law Board No. 588 on this property. In Award No. 32 that Board said:

"Basically, a claim for a violation such as we have here should be under the call rule, Article II, Section (b) 3 of the schedule agreement. The circumstances, here, however, are somewhat different. There is some question whether an extra man was available. Further, there have been a large number of comparable contract violations on this property which should not be permitted to continue with impunity. Under these circumstances, a proper penalty is for one day's pay at straight time and not at the overtime rate since the claimant actually performed no work."

Trainmaster, W. H. Hulsey, is one of several Trainmasters who have consistently violated the Scope Rule. For this reason, the proper penalty in this case is one day's pay at the straight time rate and not at the overtime rate. Claimant actually performed no work.

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 violated.

AWARD

Claim sustained in accordance with the Opinion.

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.