

Award No. 19086
Docket No. TD-18894

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 22, 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 F. E. DeBerry 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 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.

This claim was denied not only for the reasons stated in the declination of Claim 11, but also for the lack of confirmation in the Carrier's records of 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 upon 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 upon 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' allege that the following message was issued by Trainmaster W. H. Hulsey at Enid, Oklahoma:

"Enid Okla 11:15 P. M. June 22-23

HOB SO

Run train as follows June 23, 1969

Work Train Perry Sub 1 Unit call for 6:45 A.M. without fail.

No. 661 3 Units for 7:15 A. M.

No. 632 1 Unit for 8:00 A. M.

No. 638 with units off No. 637 on arrival of No. 637 Blackwell or Bender turn soon as can get mtys together after No. 638 runs.
1 Unit

Avard Turn 2 Units about 3 P. M.

Southard Switcher 1 Unit about 4 P. M.

Caller notify Perry Sub Work Train will be out 4 or 5 days. Yard give work train rider caboose and radio caboose working. Be sure furnish a rider caboose and not a chain gang caboose."

This is a message from the Trainmaster to H. O. Buzbee, the Chief Train Dispatcher which has been held on this property, not to violate the Scope Rule. The facts here are identical with those in Award No. 19085. The conclusions therein are similar with Awards Nos. 1, 3 and 9 of Public Law Board No. 588, on this property.

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 involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.