

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20016

Docket Number TD-19980

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Burlington Northern, Inc.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

CLAIM #1

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Articles 1(a) and 1(b) thereof in particular, when it required and/or permitted an Officer not within the scope of said Agreement in Carrier's Minneapolis, Minnesota train dispatching office to perform work covered thereby on October 6, 1970.

(b) For the above violation, the Carrier shall now be required to compensate the senior available qualified extra train dispatcher in Carrier's Minneapolis, Minnesota train dispatching office, one day's compensation at the pro-rata rate of pay then applicable to assistant chief dispatchers for October 6, 1970.

(c) In the event that no extra train dispatchers were available for service for said assignment, the Carrier shall then be required to compensate the senior available regularly assigned train dispatcher in the Minneapolis, Minnesota office observing his assigned weekly rest day at the time and one-half rate of pay then applicable to assistant chief dispatchers for October 6, 1970.

(d) The identity of the respective individual claimants shall be determined by a joint check of the Carrier's records.

CLAIM #2

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Articles 1(a) and 1(b) thereof in particular, when it required and/or permitted an officer not within the scope of said Agreement in Carrier's Minneapolis, Minnesota train dispatching office to perform work covered thereby on October 12, 1970.

(b) For the above violation, the Carrier shall now be required to compensate the senior available qualified extra train dispatcher in Carrier's Minneapolis, Minnesota train dispatching office, one day's compensation at

the pro-rata rate of pay then applicable to assistant chief dispatchers for October 12, 1970.

(c) In the event that no extra train dispatchers were available for service for said assignment, the Carrier shall then be required to compensate the senior available regularly assigned train dispatcher in the Minneapolis, Minnesota office observing his assigned weekly rest day at the time and one-half rate of pay then applicable to assistant chief train dispatchers for October 12, 1970.

(d) The identity of the respective individual claimants shall be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The Claim in this case concerns the issuance of a message by the trainmaster instructing the switch engine at Bismarck, N. D. to pick up eight empty cars from Mandan Yard and handle them to Meckenzie for Train No. 943 out of Jamestown to pick up and handle to Hazelton and there to spot on the main track for beet loading. One message was sent on October 6, 1970 (Claim #1) and the other similar message on October 12, 1970 (Claim #2).

Carrier first argues that the Claim is defective in that the Organization had failed to submit in its Claim the name of an employee involved in the alleged violation. In support of this argument Carrier refers to Article 24 (f) which reads as follows:

"(f) GRIEVANCES -- CLAIMS.

A train dispatcher who considers himself unjustly treated shall present his grievance or claim in writing direct, or through his duly accredited representative, to the Superintendent within sixty (60) days from date of occurrence on which it is based, and decision of the Superintendent shall be rendered within sixty (60) days from date grievance or claim is received, or from date of conference, if one is had thereon. If the train dispatcher is not satisfied with the decision rendered, appeals may be made subject to the order of progression, time limits, etc., provided in Section (c) of this Article."

Carrier states that the Board has rejected many claims with unidentified claimants as indefinite, uncertain and lacking in particularity. A number of Awards are cited, including 10458 in which we dismissed the claim stating "...in that the claimants are not specifically named nor are they easily or clearly identifiable in this case". In the case before us we are persuaded that the claimants can be easily identified from Carrier's records. In sustaining a Claim in related circumstances (Award 19466) we said: "The claim is for unnamed claimants, however they can readily be determined from Carrier's records." We shall reject this argument of Carrier, in the current case.

Petitioner claims that the two messages issued by the Trainmaster violated Article 1 (b) of the Agreement, which reads:

"(b) DEFINITION OF CHIEF AND ASSISTANT CHIEF DISPATCHER POSITIONS

Positions of chief and assistant chief train dispatchers shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

Assuming that past practice is not relevant, arguendo, the question is whether Dispatchers have the exclusive right to issue instructions concerning the picking up and setting out of cars, based on the language "...to supervise the handling of trains and the distribution of power and equipment incident thereto..." Petitioner asks us to reverse the reasoning in a long series of Awards all of which hold that issuing orders for picking up and setting out cars is not work which belongs exclusively to Train Dispatchers under the Scope Rule quoted above. The Organization cites Awards No. 43 and 45 of Public Law Board No. 588, among others, in support of its position. We note that in both of those Awards the messages were specifically not ordinary and customary messages to pick up and set out cars, as was the case in the matter before us.

A review of the prior decisions and the arguments presented by Petitioner do not persuade us that our reasoning in all the earlier cases was in error. In our judgement the messages involved herein were neither train orders nor did they involve distribution of power and equipment; sending messages to set out or pick up cars is not work which belongs exclusively to Train Dispatchers under the Scope Rule above (See Award No. 4 of Public Law Board No. 588, Award No. 5 of Public Law Board No. 629, Award 19794 and many others).

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.