

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20838  
Docket Number TD-20543

Robert A. Franden, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Soo Line Railroad Company

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

(a) The Soo Line Railroad Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Rule 1 (b) and (c) thereof in particular, when effective November 16, 1967, Carrier promulgated certain changes in the operation of Transfer Movements between Shoreham and St. Paul, Minnesota, and in so doing, removed work involving control and supervision of such movements from its train dispatching forces, delegating this work to yard and terminal forces.

(b) The Carrier shall now compensate the senior extra train dispatcher from the Minneapolis (Shoreham) office extra board one (1) day's pay at the pro-rata rate of train dispatcher for each day that an extra transfer was operated between Shoreham and St. Paul or intermediate points starting with November 16, 1967 and continuing daily until this matter is resolved. In the event that the senior extra train dispatcher is not eligible under the rules, then the claim is made for and on behalf of the next senior train dispatcher on the extra board. If no extra train dispatcher is eligible under the rules, the claim is made on behalf of the senior regularly assigned train dispatcher observing rest days. The individual names of claimants are to be determined by joint check of Carrier's payroll records.

OPINION OF BOARD: The Organization has filed this claim based on certain alleged Scope Rule violations which grew out of certain changes in the operation of transfer movements between Shoreham and St. Paul, Minnesota. It is the position of the Organization that the effect of those changes was to remove work which properly belonged to the members of the dispatcher organization. The Organization alleges that the work now being performed by other than dispatchers involved the control and supervision of the transfer movements.

The Carrier has alleged, inter alia, that the claim of the Organization is too vague and indefinite so as to permit adjudication by this Board. Suffice it to say that this issue was not raised on the property and cannot be submitted for analysis for the first time in the Carrier's presentation to this Board.

The Scope Rule provisions which the Organization has cited are Sections (b) and (c) of Rule 1 which read as follows:

"RULE 1

(b) Definition of chief, night chief, and assistant chief train dispatchers' positions: Subject to the provisions of Rule 1 (a), these classes 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 supervisions 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.

(c) Definition of trick train dispatchers' positions: This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work."

The record of the handling of this case on the property leaves much to be desired. The claim presented herein was originally presented to the Carrier January 31, 1968. The Carrier declined the claim on February 9, 1968 for the reason that the claim was "without foundation and we know of no schedule rule or agreement that would lend its support." The Carrier's denial was appealed by letter dated March 8, 1968 to which there is no response of record. On November 30, 1971 the general chairman wrote the director of personnel requesting that the Carrier make some response to the claim. On September 11, 1973 the general chairman again wrote the director of personnel this time stating that he was referring the claim to the president of the American Train Dispatchers Association for further handling in accordance with the provisions of the Railway Labor Act. The record reflects no further response from the Carrier in regard to the claim.

The Carrier is limited in its appeal to this Board to those issues which it has properly raised on the property as a defense to the claim. In that the Carrier has failed to respond to the claim on the property, we must examine the record to determine whether the Organization has stated a prima facie case.

During the handling on the property the Organization included certain instructions and notices issued at Shoreham as part of the record in support of their claim. We are of the opinion that the record on the property, including those instructions, developed a prima facie case of a Scope rule violation as claimed by the Organization to which the Carrier, for reasons known only to it, failed to respond. Further, the Carrier raised no issue on the property as to the damages claimed.

On the basis of the record, as presented to this Board, we have no alternative but to sustain the claim.

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

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

G.W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.

CARRIER MEMBERS' DISSENT TO AWARD 20838, DOCKET TD-20543

(Referee Franden)

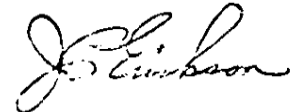
We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

J. J. Taylor  
A. C. Carter  
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A. C. Carter

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'  
DISSENT TO AWARD 20838, DOCKET TD-20543

All matters of record and/or the memorandum submitted by the Carrier Members mentioned in the Dissent were considered by the Division prior to adjudicating Docket TD-20543.

As the Dissenters state, the Carrier Members' memorandum is retained in the Master File along with a final and binding Award. Award 20838 sustains the claim attesting that the claim is valid based on the "matters of record".



J. P. Erickson  
Labor Member