

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24185
Docket Number TD-24423

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Chicago and North Western Transportation Company

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

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the currently effective Agreement between the parties, Rule 1 - SCOPE, Rule 2(b) and Rule 2(f) thereof in particular, when it permitted and/or required a person not covered by the schedule Agreement to perform train dispatcher work falling within such Agreement on August 24, 1980.

(b) Because of such violation the Carrier shall now compensate Claimant J. P. Schillace as senior qualified and rested train dispatcher at such time, one days' pay at the pro rata rate applicable to trick train dispatchers for August 24, 1980.

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement when the yardmaster at Clinton, Iowa, on August 24, 1980, instructed certain trains to operate in an eastwardly direction on the Westward track from Mill Creek to East Clinton, Iowa. The Organization asserts that such train movement can only properly be authorized by a train dispatcher.

As a result of these orders, the Organization filed a pay claim, asserting that the orders violated Rule 2 of the Agreement. That rule states, in relevant part:

"RULE 2

(b) 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.

(f) WORK PRESERVATION

The duties of the classes defined in sections (a) and (b) of this Rule 2 may not be performed by persons who are not subject to the rules of this agreement."

The Organization asserts that it initially filed a claim on August 24, 1980. On October 24, 1980, it wrote Carrier indicating that no response had been received to the original claim. Again, on November 24, 1980, during an appeal, the Organization wrote Carrier stating that it had received no reply from Carrier to either of these letters.

Carrier answered the Organization on January 8, 1981. At that time, Carrier indicated that it had no record of receipt of the claim until November 24, 1980. Carrier took the position that the claim was time barred as it was not received by the Illinois Division until more than 60 days following the date of the claim.

The Organization argues that Rule 2(f) clearly preserves the work in question to train dispatchers. Therefore, it insists that the Agreement was violated.

We conclude that the claim must be dismissed as time barred under Rule 20. Therefore, we have no jurisdiction to address the underlying merits of the dispute.

While the Local Chairman stated that he sent the claim to Division Manager, R. L. Johnson, on August 24, 1980, the record evidence is clear that Johnson never received the claim.

No evidence was introduced to support the Organization's burden of establishing that the claim was presented in a timely fashion. No timeslip was submitted etc.

In fact, the only evidence is a letter dated October 24, 1980, from the Local Chairman which exceeds the time limits. In the absence of any evidence to refute Carrier's insistence that the claim was never received, and therefore not timely presented, we have no choice but to conclude that the claim is barred. See Award 11505.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 claim is barred.

Award Number 24185
Docket Number TD-24423

Page 3

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.