

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24482
Docket Number TD-24421

Robert Silagi, 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 2(a) and Rule 2(f) thereof in particular, when it permitted and/or required Division Administrative Trainmaster J. W. Weedman to perform duties defined in the Agreement as train dispatcher duties on May 17, 1980.

(b) Because of said violation the Carrier shall now compensate Claimant M. L. Jones, who was the senior available extra train dispatcher on May 17, 1980, eight (8) hours at the straight time rate of Assistant Chief Train Dispatcher for May 17, 1980.

OPINION OF BOARD: On May 17, 1980 the Division Administrative Trainmaster issued the following message:

"East and West Dispatchers Boone
Assistant Chiefs Boone
A. L. Amundson CTD Boone

Subject; Crews Eating enroute:

Every crew that requests to eat, either by signing the request sheet at the initial terminal or by notifying the dispatcher at the initial terminal, must be allowed to eat enroute if on duty in excess of 7 hours. If it looks it's going to be close to getting them in within 7 hours, make arrangements to eat.

If you are unsure what to do, contact a Division Officer.
There must be no failure to comply with these instructions.

CC GF Maybee

J. R. Panning
ADM jw"

below: Employees allege a violation of Rules 2(a) and (f) which are quoted

"(a) Definition of Chief, Night Chief and Assistant Chief Dispatchers' Positions.

These classes 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."

"(f) Work Preservation.

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

The first question to be answered is whether the message issued by the trainmaster involves the "handling of trains and the distribution of power and equipment." Numerous awards of the Third Division hold that a trainmaster may issue instructional and informational messages provided that they are not train orders and do not authorize a train crew to make precise moves. See Awards of Referee Dolnick, 18457, 18458, 18690 and others all involving American Train Dispatchers Association and St. Louis-San Francisco Railway Company. The background of this case indicates that the message sent was intended to be and has all the characteristics of a reminder rather than a train order.

The awards cited by Employees in support of their position, are inapposite. For example, Award 18438 - Rosenbloom, dealt with a Transportation Inspector who "went far beyond managerial prerogative when he spent full days performing routine work assigned ... to a clerical employee". Award 21988 - Mead, "The work performed by Carrier's Supervisors was more than just assistance and guidance; they clearly and unmistakably performed clerical work which would have otherwise been performed by Claimants". Award 23479 - LaRocco, "... the supervisor took the transmission level readings, he performed work which constituted equipment inspecting and testing within the meaning of the Scope Clause".

The second question raises the claim of exclusivity. In order to prevail the Employees must show that the issuance of instructions is exclusively the province of Chief Train Dispatchers. Since the Employees failed to meet their burden of proof in this case the claim must be denied. See Award 19093 - Dolnick and 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.