

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(a) The Chicago, Burlington & Quincy Railroad Company hereinafter referred to as "the Carrier"), violated the Agreement between the parties, Article 24 thereof in particular, by its action in dismissing Train Dispatcher D. W. Chandler from the Carrier's service and entering record of censure on the employment record of Train Dispatcher R. L. Worster, following hearing held at Hannibal, Missouri, on June 19, 1967, the stated purpose of which was to develop the facts and determine the responsibility for collision between Extra 140 East and Tamper 843, near South River, Missouri, on June 12, 1967.

(b) Because of said violation of the Agreement the Carrier be required to reinstate Claimant D. W. Chandler as train dispatcher with all rights unimpaired and compensate him for the time lost, and the Carrier further be required to clear the record of Claimant R. L. Worster of the entry of censure, all as provided by Article 24(e) of the Agreement.

OPINION OF BOARD: Third trick Claimant failed to issue a train order to a particular train which fact went undetected by the oncoming first trick Claimant. The particular train to which the order should have been issued collided with a tamper machine, not as a result of failing to receive the order, however.

Third trick Claimant was thereafter notified that he was being held out of service for failure to properly issue the subject train order.

In due course, both Claimants, along with other employees involved in the collision, were notified to attend a hearing "... for the purpose of ascertaining the facts and determining your responsibility in connection with Extra 140 East colliding with Tamper 843. . . ."

As a result of this hearing, third trick Claimant was dismissed for failure to properly issue the train order and first trick Claimant was censured for failing to detect the error.

Claimants contend they were denied a fair and impartial hearing because the notice charged them with responsibility for the collision, a charge not proven, in their judgment, yet they were ultimately disciplined for failure to issue a train order, a charge they were not prepared to defend since such failure was not responsible for the collision.

We agree with the foregoing contention and will, therefore, 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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16587 **DOCKET TD-17348 (Referee Goodman)**

The investigation transcript, especially pages 33 and 41, clearly reveals that the train dispatchers in case were fully aware, prior to the investigation being held, of the reasons why they were charged and required to attend the investigation. Accordingly, they had adequate opportunity to prepare a defense. This being so the award is erroneous and we dissent.

W. B. Jones
R. E. Black
P. C. Carter
G. L. Naylor
G. C. White

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARD 16587, DOCKET TD-17348**

Dockets are reviewed by this Board in their entirety, not isolated pages.

The Notice to attend the investigation in no respect placed the Claimants on guard that train orders were involved. The Docket discloses that one Claimant was taken out of service for one alleged violation but was cited for another violation.

This Board has correctly held in Award 16587:

“ . . . yet they were ultimately **DISCIPLINED** (E.S.) for failure to issue a train order, a charge they were not prepared to defend since such failure was not responsible for the collision.”

George P. Kasamis
Labor Member.