

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number L9665
Docket Number TE-19714

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (T-C 5860)
that:

1. Carrier violated the Agreement between the parties when on September 2, 1971, it suspended Train Dispatcher F. L. Walls from service pending investigation.

2. Carrier further violated the Agreement between the parties when on Tuesday, September 7, 1971, it conducted a formal investigation and; 1. prejudged the case by calling Operator-Student Train Dispatcher M. W. **Goodson** as a witness for the Carrier; 2. failed to call **all** witnesses to the investigation; 3. failed to prove the charges; 4. failed to prove that there exists a rule requiring dispatchers to be responsible for actions of student dispatchers; 5. assessed discipline on speculative evidence; 6. imposed a penalty too severe even if claimant had been guilty, which he was not.

3. Carrier further violated the Agreement between the parties when on Tuesday, September 7, 1971, it conducted an investigation and, subsequently, without just cause, assessed a deferred suspension of thirty (30) days against Dispatcher F. L. Walls.

4. Carrier shall now be required to compensate Dispatcher F. L. Walls for all time **lost**, eight (8) hours at the Christiansburg District Dispatchers' rate of pay for each date, September 2, 3, 4, 7, 8, 9, 10, 11, 14, 15 and 16, 1971.

5. In addition to amounts claimed above the Carrier shall pay Dispatcher F. L. Walls an additional amount at the statutory rate of interest for the State of Virginia for any amounts due under (4) above.

6. Carrier shall further be required to remove and expunge the deferred suspension of thirty (30) days from the record of Dispatcher F. L. Walls and shall forthwith clear his record of all charges or unfavorable entries or references thereto.

OPINION OF BOARD: The Organization contends that the Carrier erred in its interpretation and application of the Agreement when it held the Claimant out of service for eleven days and meted out a deferred **30-day** suspension under the following circumstances:

On September 2, 1971 the Claimant was **the** regularly assigned day-trick Train Dispatcher in the Radford Division Headquarters in **Roanoke**, Virginia. Working with him on the shift was a trainee Train Dispatcher who held a regular job of Telegrapher, and who had been in training for approximately ten **(10)** months.

On this day the Chief Dispatcher was off duty for a dental appointment. The trainee who was operating the Centralized Traffic Control Machine, made a mistake which resulted in a "hi-rail car" and a train moving in the opposite direction utilizing the same track.

The mistake was discovered by the Claimant Train Dispatcher in time for him to take the necessary corrective action to avoid an accident. There was no accident; no damages and no delays resulted.

The Claimant was taken off his job before completing his trick and was held out of service for eleven days. After a hearing he was given a 30 day deferred suspension. The trainee was disqualified as a Train Dispatcher and was divested of his regular Telegrapher job and put on the telegrapher extra board.

There can be no doubt that public safety requires the Carrier **to** maintain the highest safety standards. In this case, on the other hand, the Carrier cannot demonstrate that the Claimant violated any specific rule. At best, the Carrier can only rely on the requirement that dispatcher on duty is not relieved of responsibility because of the presence of a student dispatcher. The evidence of record clearly indicates that the Dispatcher, becoming aware of the error by the Student Trainee, recognized his responsibility, took prompt corrective action and averted the disaster.

There is no indication that the Claimant was remiss in his responsibility. In fact, the record does not indicate any other disciplinary action against the Claimant for the 25 years of his service. Since no accident actually occurred and since the **Claimant** has a clear past record, the penalty seems excessive.

Claim 5. is an additional claim calling for payment of punitive interest at the statutory rate of interest for the State of Virginia.

The position of this Board in so far as interest is concerned has been set forth in so many cases as to be considered Stare Decisis.

Absent an express provision in the collective bargaining agreement providing for the payment of interest this **Board** is without jurisdiction to create such a remedy. The Agreement between the parties in this case contains no such provision. The claim for interest is denied.

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

The Agreement was violated.

' A W A R D

The claim is sustained as modified. There is no interest awarded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order **of** Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.