

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award Number 20385
Docket Number TD-20379

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Norfolk and Western **Railway Company**
(**Lake** Region)

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

- (a) The **Norfolk & Western Railway Company (NYC&StL)** (hereinafter referred to as "the Carrier"), violated the effective Schedule Agreement between the parties, Articles **8(a), 8(b)** and **8(c)** thereof in particular, by **its** disciplinary **act-**tion in assessing Claimant Train Dispatcher G. E. **Semones** fifteen (15) days' actual suspension following formal hearing held **on** May 15, 1972;
- (b) Because of said violation, the Carrier shall now be required to clear Claimant **Semones'** personal record of the charges involved in the hearing of May 15, 1972 and compensate him for all loss of time in connection with said suspension.

OPINION OF BOARD: On **May 15, 1972 Carrier** convened a formal hearing in order "**...to** determine the facts and responsibility, in connection with train Extra 237 West, AP-1 passing train order signal indicating train orders **at** Silver Creek, N.Y. at approximately **3:20 P.M.** May 6, 1972." Claimant was asked to attend the hearing and was charged with failure to see that the train was properly cleared at Silver Creek. Following the hearing Claimant was assessed 15 days' actual suspension, the operator 30 days' actual suspension, the engineer 15 days' actual suspension and the remainder of the crew 10 days' actual suspension.

Carrier asserts that the evidence at the hearing demonstrates without doubt that Claimant did not properly clear Extra West 237. Carrier states that Claimant **could** have cleared the train at **2:57 P.M.** at the same time he cleared the eastbound train, that his reasons for not clearing the westbound train were weak and invalid, and that he was guilty as charged. Carrier admits that even though Claimant was not solely responsible for the westbound missing the train order, his infraction was serious and could have had more serious consequences.

Petitioner argues that Claimant train dispatcher issued the proper **train** orders and **had** taken **all** the **necessary** steps prescribed by the rules to insure that the train would receive the instructions he had issued. Subsequent violations of the rules by the operator, engine crew or train crew were unrelated **to** Claimant's activities. The Organization insists that no operating rules were cited by Carrier in the notice of **investigation during the hearing or in** the notice assessing **discipline** with respect to **Claimant's alleged** dereliction. Petitioner asserts that **Claimant was not** required under the **rules** to clear the train **immediately after** the train order was **made** complete. A **number of** procedural **arguments** were also raised by the Organization; in **view** of our **conclusions** with respect to the **merits** we do not deem it **necessary** to deal with those issues.

The record is clear and it is **undisputed** that Claimant did not **clear** the train **in** question promptly at Silver Creek. however, the record is totally devoid of information or agreement **support** for the contention of Carrier that this action violated an operating rule. **While** the other **employees** disciplined as a result of the **incident were** held to have violated specific operating **rules**, none were cited with respect to **Claimant**. An examination of the transcript indicates that Claimant **was** not responsible, either by omission or commission, for the mistakes of other **employees**; his **own** actions **could** have, at worst, delayed the train. It was incumbent upon Carrier to indicate the **nature** and specific rules involved **in the** alleged transgression; this **Carrier** failed to **do**. At the outact of the hearing its purpose **was** outlined, as Indicated above, **and** the incident in question involved the train **passing the train** order signal. **Claimant was** not directly or indirectly **responsible** for this occurrence, as we **understand** the **testimony**. It **follows**, therefore, **that Claimant could** only be found **guilty** of a particular act which could be described **as violative** of the operating rules in **another** respect; **such** allegation was not made by Carrier. The claim must be sustained.

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.

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~~Claim~~ sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.