

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DMSIOR

Award Number 20565  
Docket Number TD-20402

Frederick R. Blackwell, 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 (1) the effective schedule Agreement between the parties, Rules 24(a) and 24(b) thereof in particular, and (2) Section 2, Sixth of the Railway Labor Act, as amended, by its action in:

(1) assessing fifteen (15) days' actual suspension against Claimant Train Dispatcher K. D. Shreffler following formal hearing conducted January 18, 1973, which action was then used as sub-basis for requiring him to serve a separate fifteen (15) days' suspension previously assessed and deferred in connection with an earlier investigation, and

(2) assessing Claimant Train Dispatcher R. E. Rush fifteen (15) days' deferred suspension following formal investigation held on January 18, 1973, and

(3) failing to specify time and place for conference within ten (10) days following receipt of request from the Employees, and to hold such conference within twenty (20) days of receipt of said request.

(b) Because of said violations, the Carrier shall now be required to:

(1) clear Claimants K. D. Shreffler and R. E. Rush's respective personal records of the fifteen (15) days' suspension assessed following the January 18, 1973 hearing referred to in paragraphs (a) (1) and (a) (2) above, and

(2) compensate Claimant K. D. Shreffler for all time lost as a result of the discipline assessed following the January 18, 1973 hearing referred to in paragraph (a) (1) above.

**OPINION OF BOARD:** The Claimants were disciplined by suspension after hearing, and findings of guilt, on the charge that they failed to take prompt action to stop **for** inspection a train which was believed to have derailed and **rerailed** itself on the Illinois Division, and which **was** ultimately stopped **for** inspection on the Iowa Division. The Claimants are train dispatchers on the Illinois Division.

As the basis for their protest of the discipline, the Employees make a four-part due process argument and in addition argue that the hearing evidence does **not** support the discipline. Each party asserts that the other party failed to follow applicable procedures concerning a conference on the property; in this connection the Employees **ask** that Carrier be found in violation **of** the Railway Labor Act while the Carrier asks that the claim be dismissed for not having been handled in the usual manner on the property.

The record contains many due process deficiencies and thus there is no basis for sustaining the Employees' objections on these grounds. The parties' contentions on the conference issue began with the **General Chairman's** request for a conference. In his March 7, 1973 letter to the Director of Labor Relations, there was no response to this request. Then, under date of April 19, 1973, the **General** Chairman stated that, because the ten days specified for setting and the twenty days for the holding of a conference had expired, the Carrier's silence was **taken** as denial of both the appeal and request for conference and that the claim was being referred to the **Employees'** highest officer for further handling as provided in the **Railway** Labor Act. (The ten and twenty day time limits referred to in this letter were based on the provisions of the Railway Labor Act, Title 1, Section 2, Sixth.) On April 25, 1973, the Employees submitted the dispute to this **Board** by filing the required Letter of Intent. Thereafter, under date of April 30, 1973, the Director of Labor Relations formally denied the appeal and suggested a conference **on May 4, 1973**. A conference was actually held on May 7, 1973, and resulted in denial of the appeal, as is confirmed by the May 18, 1973 letter of the Director of Labor Relations. The record shows that the parties **were** at cross-purposes in **regard** to how and when a conference should come about, but it serves no useful purpose to delve into the details of their differences. Suffice it to say that this Board has no **jurisdiction** to consider the **Employees'** contention that the Carrier violated the Railway Labor Act, Award No. 19950; and since a conference **was** held shortly **after** the **Employees'** Letter of Intent **was** filed with this **Board**, there is no merit in the Carrier's contention that the claim should be dismissed, Award **No. 19034**.

We come now to the merits. The Carrier's charge that the **Claimants** failed to take prompt and proper action after **receiving** information about a derailment was based on Rule 102 (a) of the Consolidated Code of Operating Rules, reading:

"When there has been a derailment, after equipment has been rerailed it must be known by inspection of track and equipment that it **is** safe for the train to proceed."

The bearing record shows that shortly after 3:00 P.M. on January 5, 1973, a Section Foreman observed **track damage** at AE Interlocking at **Ashton**, which **damage** was not present during his **earlier** inspection of the **same** area at 10:30 A.M. that day. The nature of the damage was such that the **Foreman** inferentially concluded that a derailment-rerailment of a train had occurred without the train **having** stopped; at about 3:15 P.M., he phoned Claimant Train Dispatcher Shreffler about the matter and they concluded that the train involved was **Train** No. 141. The **Section Foreman** asked Claimant Shreffler to have the train stopped and inspected; Claimant then called the Second Street Office, Clinton, Iowa, from 3:15 to 3:30 P.M., without getting **any** answer from the Clinton end. The Claimant indicated, however, that it **was common** to have difficulty in reaching the Second Street **Office**, as it is a very busy office, and that he expected to receive a call from Second Street as such happened **almost** routinely every day at about 3:20 to 3:25 P.M. The Claimant said the most important step that he could have taken was to have notified the Chief Dispatcher, but the Chief was not present at the time. The Claimant conceded that, in retrospect, he could have tried to phone the Iowa Division Chief Train Dispatcher at **Boone** and that "looking at it today I would say another route **possibly** should have been taken." The Claimant never conveyed the information to Clinton or elsewhere, so when the shift changed at 3:30 P.M., he gave the **information** to his relief, Claimant Train Dispatcher Rush. Claimant Rush said that he, too, phoned Clinton but got no answer. He said he thought he rang Clinton two or three times, but was not positive. He tried once to get the attention of the Assistant Chief Train Dispatcher to **tell** him about the derailment, but the Assistant **Chief** was busy on the phone and could not be interrupted. At about 4:10 P.M. the Assistant Chief learned about the derailment, apparently through a phone call from the Roadmaster; he **asked** Claimant Rush where the derailment had occurred, and appears to have made further phone calls to obtain information. At 4:20 or 4:25 P.M. he told **Claimant** Rush to contact Clinton right away. The **Claimant's** first effort to reach Clinton yielded a busy signal, but he got **through** on the second call; as a result, Train No. **141** **was** stopped and inspected at **Beverly**, Iowa, where two **cars** showing evidence of derailment were set out. The record showed that **Train** No. 141 had left the Illinois Division when the Section **Foreman** reported the evidence of derailment, and that the train had received four running inspections, including a 4 to 5 MPH "roll-by" inspection by **carmen**, before the Claimants were advised of the derailment.

In reviewing the foregoing, and the whole record, we find no significant disagreement of fact. It **appears** that the Carrier determined that there was no justification for the delay of **more** than one hour

between the receipt of notice of derailment and the stationary inspection of Train **No.** 141 and, in connection therewith, the Carrier further determined that the Claimants contributed to such delay in a manner which warranted discipline. Contrarily, the **Employees** contend that the facts, when given proper perspective, show that the Claimants did not fail to take prompt and proper action and that their immediate and continuing efforts to contact the Iowa Division constituted adequate compliance with Rule 102 (a). The **Employees** specifically state that, since four running inspections of Train No. 141 had been made before the **Claimants** learned about the **derailment**, Rule 102 (a) would not necessarily dictate that the train be stopped for a fifth inspection; that the Claimants' knowledge of these inspections eliminated the need for "general alarm" type actions on their part; that the Chief Train Dispatcher and the **Assistant** Chief had a role in the delay in inspecting the train in that, although normal procedure for contacting adjoining Divisions **is** through the Chief or the **Assistant** Chief on duty, the Chief was absent when Claimant Shreffler **received the report** and the Assistant Chief was preoccupied when Claimant Rush tried to give him the report; and that the ten minute delay attributable to the Assistant **Chief's** consultations with other officials before deciding to ring Clinton "right away", shows that the situation was not so critical as to warrant greater efforts than the Claimants made. These contentions by the **Employees** obviously spring from their interpretation of an undisputed set of facts, and we have no doubt that the instant record lends **itself** to such interpretation. But neither do we doubt that the record lends itself to the different interpretation which the Carrier has reached. Consequently, at the most, the **Employees'** contentions show that the record presents competitive conclusions on which reasonable minds might differ: however, it is well settled that the persuasive quality of such conclusions is not a proper subject of Board inquiry in determining whether a disciplinary action shall be modified or vacated. Our subject of inquiry concerns the underlying basis of the **conclusion** ultimately reached, with regard to whether such basis is so unreasonable and unsupported by the evidence as to be arbitrary and capricious. Under these criteria, **and** on the whole record, we must conclude that the Carrier's disciplinary action is supported by substantial evidence of record and that such action cannot be said to be **arbitrary or capricious**. We shall deny the claims.

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 mt violated.

A W A R D

Claims denied.

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

ATTEST: *A. W. Parker*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.