

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD DIVISION**

Award Number 20829  
Docket Number TD-20635

Joseph A. Sickles, Referee

**PARTIES TO DISPUTE:** (American Train Dispatchers Association  
(Burlington Northern Inc.

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

(a) Burlington Northern Inc., hereinafter referred to as "the Carrier" violated the Agreement in effect between the parties, Article 24 thereof in particular, by **its** action in assessing discipline in the form of thirty **(30)** days' actual suspension from service upon Train Dispatchers K. N. Specht and C. J. Stokes, following formal investigation held **on** June 1-2-3, 1972. The record of the investigation fails to establish responsibility **on the** part of Claimants as charged, thus Carrier's action can only be viewed as arbitrary, capricious and **in** abuse of managerial **discretion**.

(b) Carrier shall **now be** required to **compensate** Claimants for wage loss sustained, and to clear their employment records of the **charges** which purportedly provided the basis for assessment **of** discipline.

**OPINION OF BOARD:** This dispute concerns asserted responsibility of **two** Train Dispatchers regarding a fatal head-on collision between **two** of Carrier's freight trains.

The Organization alleges a number of procedural deficiencies, and raises defenses to the merits of the charges. Carrier denies **procedural error**, and insists that it has demonstrated that (while actions of others may very well have **been** improper) the actions of claimants contributed to the accident; and that factor is a sufficient basis for imposition **of** disciplinary action. Be that as it **may**, in order to justify the suspensions, there **must** be a **showing** of reasonable causation between the actions **and** the accident.

The record **demonstrates** that restricting Train Order No. 263 was properly and timely issued **concerning** the two trains. However, Carrier states that neither of the Claimants arranged for an operator to report for duty at the Location "**where** a hazardous condition existed", and that the discipline was imposed for a disregard of safety in releasing the operator from duty and failing to provide "special precautions."

The record in this dispute is voluminous. We have studied it et length in an effort to ascertain if Carrier has presented substantive evidence to justify its action. In reaching **our** conclusion, we **have** not been unmindful of the fact that the evidence shows that one of the trains proceeded against the "stop" signal without obtaining Train Order 263. We have also considered the evidence concerning the "hours of service" **law** which had **a** bearing on the fact that the operator et Yates City was absent et the pertinent time, es well **as** evidence of practices end procedures which had **a** bearing **on** this type of a situation.

Carrier has stressed that Claimants should have taken "special **precautions**" under the circumstances here in issue. In situations such es this, especially when a tragic, fatal accident is under consideration; there **is** a very human tendency **to** employ a certain amount of hindsight, and to **engage** in **certain strained** speculations as to possible steps which might **have** avoided the incident. At the same time, there may be a tendency to excuse certain oversights based upon continued utilization of procedures which were questionable et the outset.

In **any** event, we have searched all documents of record concerning Carrier's contention that Claimants should have taken "special precautions" under the applicable regulations. We are unable to find, with **a** sufficient degree of certainty, whet special precautions the **Dispatchers** should reasonably have taken, under all of the circumstances, end within their **area** of responsibility - es a prospective judgment, unaided by misleading, after the fact. speculation. We will sustain the **claim**.

Accordingly, it is unnecessary to pass upon the procedural objections.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record end all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier end the **Employes** involved in this dispute **are** respectively Carrier end **Employes** within the meaning of the Railway Labor Act, es approved June 21, 1934;

That this Division of the **Adjustment** Board has **juris-**diction over the dispute involved herein; end

**That** the Agreement **was** violated.

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Claim sustained.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD

By Order of **Third** Division

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated et Chicago, **Illinois**, this 30th **day** of September 1975.