

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20984
Docket Number TD-20937

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Fort Worth and Denver Railway Company

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

(a) The Fort Worth and Denver Railway Company, hereinafter "the Carrier", violated the Agreement in effect between the parties, Rule 28 (a) and (b) thereof in particular, by its action in assessing discipline in the form of fifteen (15) days' suspension against respective Claimant Train Dispatchers If. W. Whitehouse and K. C. Vandaveer, effective August 13, 1973 following formal hearing held July 19, 1973. The record of said formal hearing fails to support Carrier's charges of rules violations, contains evidence of prejudgment, failure to comply with time limits prescribed and failure to provide material witnesses, thus imposition of discipline was capricious, arbitrary, unwarranted and indicative of complete disregard for Claimant's rights in the procedures required in industrial due process.

(b) Carrier shall now be required to rescind the discipline assessed the respective Claimants, clear their employment records of the charges which provided the basis for said action, and to compensate them for wage loss sustained due to Carrier's action.

OPINION OF BOARD: Claimants were notified to appear for investigation concerning Extra 6502 being cleared without all of the orders addressed to that train. Subsequent to investigations, both Claimants were suspended from service for a period of fifteen (15) days.

The employees contend that the mandatory time limits for holding an Investigation were disregarded by Carrier. We note that Claimants raised this matter at the investigation. We also note that a basis for the postponement of the hearing, beyond the originally established data, was the unavailability of me of the Claimants due to a scheduled vacation. While this Board has upheld the rigid application of time limit rules; at the same time, we have recognized that employees may not defeat the orderly administration of the Agreement by their own absences. Under this record, we conclude that Carrier's actions, concerning the scheduling of the hearing, do not require a dismissal of the charges.

It is clear that the train in question was cleared with 11 train orders. The crew heard a conversation on the radio which appeared to come from another train. They established radio contact and discovered that there

was an opposing train about five (5) miles distant. When the crew contacted the Claimants (*on-duty* dispatchers) they were informed that Train Order 54 was in effect - concerning the opposing train. The twelfth (12th) train order (#54) had not been previously delivered.

Our review of the transcript of the investigation has indicated to us that Carrier produced substantive evidence to establish that Claimant Whitehouse deviated from appropriate procedures concerning the handling of Order 54. The employees have contended that the procedures themselves can lead to the results demonstrated here. But, Claimant Whitehouse was an employee with considerable experience, and we feel that he could have complied with instructions, but did not.

Claimant Vandaveer was disciplined for his failure to report the violation. He attempted to show that he made appropriate notification; but we feel that the record is to the contrary. We cannot condone his "oversight" of taking a copy of the Conductor's message home with him when he went off duty. His plea that there is no "time limit" for rendering a report is not persuasive.

Finally, we consider the employees' contention that the Carrier erred by not calling certain witnesses - which demonstrated a prejudgment of the issues. We do not agree. The evidence of record supports the findings of guilt. To sustain the employees' contention here would require us to engage in certain speculations of potential testimony when the record falls to present any reasonable basis for said speculation.

We will deny 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 oralhearing;

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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.