

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22393
Docket Number TD-22358

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Train Dispatcher R. Rose be restored to Train Dispatcher service with all seniority rights and benefits restored.

OPINION OF BOARD: On July 29, 1976, Claimant was advised of an investigation concerning an asserted *failure* to issue proper train orders. Subsequent to investigation, he was dismissed from *service*.

Although the **Employees** concede that Claimant issued conflicting train orders which authorized opposing **movement** on the same track, they urge that he had requested time off - two days earlier - because personal problems compelled him to realize that he was "**..not** in the right frame of mind to be dispatching trains." Further, they assert that he corrected the error when it was brought to his attention and that he reported the incident. Accordingly, it is urged that we restore the Claimant to service.

Carrier contends that Claimant's plea to this Board is merely a request for leniency; which is not a proper function of *this* Board. **Moreover**, Carrier denies that the record substantiates the assertion that it was made aware of any "emotional strain" being suffered by Claimant and **that** it refused to permit him necessary time off to combat it. Rather, it insists that the record only shows that Claimant asked for **some** time off, but "let the matter drop" when he was told that there were no relief **employees** available.

Finally, Carrier notes that Claimant's past record included a previous dismissal for failure to issue proper train orders. **He** was reinstated on July 6, 1976 - as a matter of leniency - which reinstatement predated the instant inadvertence to duty by only three weeks.

The Board is not inclined to disturb the discipline. Assuming that the matter before us is not a plea for leniency, it would be necessary for us to determine that the quantum of punishment imposed was arbitrary and/or capricious in order to warrant a restoration to service. **Here**, the oncoming Dispatcher detected the error and called it to the Claimant's attention. **We** cannot conclude that the **Employee** attempted - in a meaningful way - to advise the Carrier that his emotional state precluded him from **performing** his duties in a proper fashion.

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 not violated.

A W A R D

Claim denied.



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

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 27th day of **April** 1979.