

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 22468
Docket Number TD-22421

Robert A. **Franden**, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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

(a) **The** Atchison, Topeka and Santa Fe Railway Company
(hereinafter referred to as "the Carrier") violated the current
Agreement (effective September 1, 1949) between the parties,
Article VII thereof in particular, when the Carrier assessed twenty
(20) demerit marks on the **personal** record of Extra Train Dispatcher
J. M. Minoz (hereinafter referred to as "the Claimant") based on an
investigation held on August 26, 1976. The record, including the
transcript of said investigation, fails to support the Carrier's
charge of rule violation by the Claimant thus imposition of twenty
(20) demerit **marks** was arbitrary and unwarranted.

(b) The Carrier shall **now** be required to remove the twenty
(20) **demerit marks** and clear the Claimant's personal record of the
charges which allegedly provided the basis for said action.

OPINION OF BOARD: The facts in the instant case are not **in** dispute.
Extra train 3667 West in violation of a red
signal entered an interlocking which it occupied for one minute
before **backing** out. The claimant was on duty as dispatcher at the
time. The Carrier takes the position the claimant had the responsibility
to report the violation under operating Rule E:

"E. Employes must do everything in their power to
see that the rules and special instructions are
followed by all, and they must promptly report
violations."

The claimant takes the position that he was not aware of the
violation and therefore could not possibly have any responsibility
to report it.

There are three devices in the dispatcher's office ~~which~~ would advise him that the train had run an **interlocking signal** displaying **red**: 1) bell that **rings** when a **train passes an** interlocking **signal** 2) a TCS Graph recording and 3) the light **system** on the dispatcher's panel.

The Carrier takes the position that if claimant did **not** detect the violation he was not being attentive to his duties in violation of **operating Rule E**. **It may be reasonable to assume that an** attentive dispatcher would have noted the **violation** but this does not prove that claimant failed to report something of which he **had** actual knowledge. The **claimant** was found guilty of failing to report the violation under Rule **E** not failure to be attentive to his duties under some other rule. The transcript of the investigation does not support the Carrier's position that it has met the burden of proof in the instant case. It has not. We will not let the fact that the discipline is light influence our decision. The cases are clear as to the Carrier's burden to support its **charge with evidence** of probative value.

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;

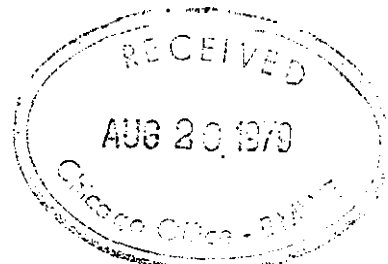
That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the **meaning** of the Railway **Labor** Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July **1979**.