

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22497
Docket Number TD-22326

Louis Yagoda, 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:

(8) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Rule 24(a) thereof in particular, by its action in assessing Claimant E. E. Cigler discipline in the form of fifteen (15) days actual suspension as a result of investigation held on October 8, 1976.

(b) Carrier shall now rescind the discipline assessed, clear Claimant's employment record of the charges which provided the basis for said action, and to compensate Claimant for wage loss suffered due to Carrier's action.

OPINION OF BOARD: There is no disagreement concerning the fact that while employed as train dispatcher at Green Bay, Wisconsin, Claimant, on September 23 and 24, 1976 issued Train Orders No. 140 and No. 145 respectively, fixing 8 meet between Train No. 183, operating from Butler to Green Bay, and Train No. 182, operating from Green Bay to Butler, at Calumet Yard, Manitowoc, Wisconsin, 8 point between Tavil Tower and Sheboygan. The trackage involved is single track territory between Tavil Tower and Wisconsin Tower at Butler.

On both of the days in question, upon the arrival of Train No. 183 at Calumet Yard, Manitowoc, Claimant issued Train Order Nos. 148 and 154 respectively, giving Train No. 183 from Butler the right of track over Train No. 182 from Calumet Yard to Tavil Tower at Green Bay. This was in conformity with the instructions of the controlling Train Orders.

However, on neither date did Claimant annul the first order establishing the meet at Calumet Yard when issuing the second order that "No. 183 has right over No. 182, Calumet Yard to Tavil." Accordingly, on both evenings, Train 183 proceeded from Butler past Manitowoc to Tavil while Train 182 waited at Tavil.

Because of **having allowed** these **two** inconsistent Train Orders to **stand**, Claimant was tried on the following **charges**:

"Your responsibility in connection with **issuing conflicting train orders** to **trains #183 and #182** on September 23, 1976, while you were **employed** as Shoreline District Train Dispatcher, on Job #006, **from 4:00 p.m. to 12:00 midnight**, September 23, 1976."

and

"**your** responsibility in connection with **issuing** conflicting train orders to **trains #183 and #182** on September 24, 1976, while you were **employed** as Shoreline District Train Dispatcher, on Job #006, **from 4:00 p.m. to 12:00 midnight**, September 24, 1976."

The 15-days actual suspension being here appealed resulted from said trial.

At the **hearing**, Claimant admitted that he had failed to issue the annulling order required for annulling Train Orders No. 140 and No. 145 respectively, for the **evenings** of September 23 and 24, 1976, so that Train No. 183 could properly move from Calumet Yard to Taval with priority over Train 182, stating that: "at the time it came to clear the train, I was occupied with other duties...when it came time to clear #183 at Calumet Yard. And, I didn't give #183 enough to go from Calumet Yard to Taval. I should have given them another order, the operator at Taval and #183 annulling the meet at Calumet Yard."

Carrier correctly points out that as the situation stood, after Train No. 183 arrived at Calumet Yard, it had two train orders, One requiring it to meet Train 182 at Calumet, the other allowing it to move from Calumet to Green Bay. Carrier regards such act of omission by dispatcher as causing "conflicting" train orders to be in effect in violation of Rule 301,a, which states:

"Train dispatchers must guard against dangerous conditions in train movements and must not issue improper or unsafe combinations in train orders."

Defense of **Claimant** and his **Organization** is that the **admitted** omission of the **act** of annulment by **dispatcher cannot** be accurately described as his having issued "**conflicting train orders**", the **charge** on which he **was** tried and for which disciplined. They point, moreover, to the **testimony** of Chief **Train Dispatcher** R. D. **Mohr**, acknowledged by both **parties** to be an expert witness on the rules and mechanics of train **orders**, in that Mr. **Mohr** stated that both orders could have been **complied** with, with no **hazard of accident** involved.

Finally, **Organization** points out that the crews involved, tried at the **same** time for the **same** episodes, were **penalized** only by 15 **days** deferred suspensions although at the times involved they **made** their movements without **train** authority to do so.

The **Board** concludes that **Carrier** was justified in finding **Claimant** derelict in **his** duties in the respect charged. The fact that the failure **was an act of** omission rather than **commission** does not **condone** it nor does it bring about a **valid differentiation** from **dispatcher's** "responsibility" in "issuing conflicting train orders", the charge on which he **was** tried. To let the conflict stand when the duty **was** to **annul and amend** had the **same** culpable consequences. It **has** been shown that unnecessary **delay was** caused by the violation.

We do not find the **penalty** excessive nor affected by the lesser penalty given crews involved in the **same** episode.

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.

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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 24th day of August 1979.

