

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22514  
Docket Number TD-22313

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, when the Carrier suspended Train Dispatcher F. E. Putnam (hereinafter referred to as "the Claimant") from 12:01 a.m. June 11, 1976 through 11:59 p.m. August 9, 1976, without pay, based on investigation(s) held on June 14 and 19, 1976. The record, including the transcript of said investigation(s), fails to support the Carrier's charges of roles violations by the Claimant, thus imposition of sixty (60) days suspension from service, without pay, was arbitrary and unwarranted.

(b) The Carrier shall now be required to compensate the Claimant for wage loss sustained due to the Carrier's action of suspending the Claimant from service without pay and to clear the Claimant's personal or employment record of the charges which allegedly provided the basis for said action.

**OPINION OF BOARD:** The Claimant was mtifiedto attend an investigation concerning responsibility in connection with Extra 1729 West operating between Logan and Butte, Montana, without a train order authorizing the movement.

Subsequent to the investigation, the employe was suspended for sixty (60) days, based upon Carrier's conclusion that he had failed in his responsibility as a Train Dispatcher to observe that the train did not have atrainorder authorizing the movement.

The Organization asserts that the Claimant was mt responsible for Extra 1729 West-operating between the two locations without authority, which was the incident under investigation. Moreover, the employe states that he was faulted and disciplined for something mt included in the notice of investigation, i.e., a failure to observethat the Extra 1729 West did mt have atrain order authorizing movement between the two cities.

Recently, we have considered a similar assertion that the Claimant was disciplined for something not reasonably included within the charges, and we sustained the claim. See our Award 22493. But here, we do not feel that there is a fatal variance, inasmuch as the finding of guilt is reasonably includable within a charge of responsibility in connection with the train's operation.

Unquestionably, 'the crew was at fault for moving between Logan and Butte without an authorizing train order, which is admitted by the Carrier. But, their responsibility does not automatically absolve the Train Dispatcher from responsibility.

The Organization states that the employee was charged with "being responsible for the movement of Extra 1729 West." We disagree. The charge concerned responsibility "in connection with" the movement.

We have reviewed the transcript of proceedings and the record as a whole, and we find that the Carrier presented substantive evidence to demonstrate that the Claimant did not issue a required clearance, and when the Claimant became aware that the train had entered the designated area, he made no provision for issuance of a running order. In short, we are of the view that the Claimant did not take all required action.

**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:

  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.