

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22720  
Docket Number TD-22479

Joseph A. Sickles, Referee

**PARTIES TO DISPUTE:** (American Train Dispatchers Association  
(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 suspended Train Dispatcher R. J. Alexander, (hereinafter referred to as "the Claimant") from Ray 19, 1976 to June 18, 1976 without pay. The record, including the transcript, shows that the imposition of thirty (30) days' suspension without pay on the Claimant was arbitrary and an abuse of managerial discretion, the discipline being harsh, excessive and discriminatory.

(b) The Carrier shall now be required to compensate the Claimant for all wages lost, as provided in Article VII, Section 6, and clear the Claimant's personal record by removal of these charges.

**OPINION OF BOARD:** On April 6, 1976 Claimant was notified to attend an investigation concerning possible violation of Operating Rules in connection with a collision. Subsequent to the investigation Claimant was assessed a thirty (30) day suspension.

On March 24, 1976 an Extra Gang Foreman contacted Claimant and requested permission to occupy the north track within the interlocking limits. Claimant granted permission. Thereafter Extra 8513 collided with an on-track machine where the track crew was working. Carrier stresses that the Foreman advised the Claimant that his crew would be working "... in the east crossover on the north track" and thus the Claimant was clearly on notice of potential hazard. Further, Carrier emphasizes that the Foreman's indication that he was unaware of "numbers" should have warned the Claimant of a potential collision-course.

Our review of the entire record convinces us that Claimant surely shared in the responsibility for the incident and discipline was warranted. In this regard, Carrier asserts that it can "...take into consideration, Claimant's prior record" and it states "...a review of

"Claimant's prior record indicated Claimant... has been **involved** in what were apparently some very serious derelictions in the past, but in which instances he was shown considerable leniency." Then, Carrier cites as "One of the prior instances" a 1975 case in which Claimant was held not responsible.

Certainly - as Carrier cites - it may rely upon a prior disciplinary record when it considers the quantum of punishment to be assessed. But here, we find nothing to show what **record** was considered, except for a reliance upon one incident in which Claimant was held not to be **responsible**. Thus we have no recourse but to reassess the **disciplinary action imposed**. The fact that the Foreman's discipline was limited to demerits is not **dispositive** because of disparate **responsibility**, but it is indicative. We will only sustain so much of the discipline as impairs a ten (10) day suspension without pay.

**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 discipline was excessive.

A W A R D

The Claim is sustained as it relates to any **discipline** over and above a ten (10) day suspension without pay.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pambola*  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.