

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22889  
Docket Number TD-22735

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Norfolk and Western Railway Company

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

(a) The Norfolk and Western Railway Company, formerly the New York, Chicago **and** St. Louis Railroad Company (hereinafter **referred** to as "the Carrier"), violated the current Agreement (effective August 1, 1951) between the parties, Article 8 thereof in particular, when the Carrier refused to give Train Dispatcher **C. W. Hardin** (hereinafter referred to as "the Claimant") a hearing within ten days from date of notice as provided by the Agreement, when the Carrier failed to give the **Claimant** a fair and impartial hearing as provided by the Agreement and when the Carrier suspended the Claimant from service for thirty (30) days from Wednesday, November 16, 1977 to and including December 15, 1977 based **on** hearing held on September 21, 22, October 7 and November 1, 1977. The record, including the transcript, fails to support the discipline assessment made by the Carrier and/or establish guilt on the part of the Claimant. Therefore, the imposition of discipline was arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) The Carrier shall **now** be required to compensate the Claimant for the net wage loss suffered by him, as provided by Article 8 **(e)** and clear the **Claimant's** personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: Claimant, Train Dispatcher, C. W. **Hardin**, after investigation, was suspended for thirty (30) days. Claimant was charged in the notice of hearing as follows:

'You are charged with hi-rail **#3701** and Extra West **2413** both occupying westbound main track between M.P. 172 and M.P. 183 Friday, August 26, 1977, at approximately **3:35** P.M. without proper protection being provided for hi-rail **#3701**."

The Board is of the opinion that this case is properly before us for consideration. Therefore, we reject Carrier's petition for dismissal.

As to the merits, we conclude that Carrier failed to meet its burden of establishing, by substantial evidence, that Claimant was **guilty as** charged. As such, the claim **must** be sustained.

Given the disposition of this particular dispute on the merits, it is unnecessary for us to address the procedural issues raised by the Organization.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.