NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22981
THIRD DIVISION Docket Number TD-22881

Robert A. Franden, 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 current Agreement (effective on consummation of merger of Burlington Northern Inc. on March 3, 1970) between the parties, Article 24 thereof in particular, when the Carrier suspended train dispatcher J. L. Martin (hereinafter referred to as "the Claimant") from service of the Carrier for a period of ten (10) days, effective 12:01 A.M., October 11, 1977 to and including 11:59 P.M., October 20, 1977, without pay and when the Carrier made an entry for these charges on the Claimant's personal record. 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 au abuse of managerial discretion.

(b) The Carrier shall now be required to compensate the Claimant for the wage loss suffered by him in accordance with Article 24(e) and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: Claimant was suspended from the service of the Carrier for ten days "....for violation of General Rule A and Rule 990 of the Consolidated Code of Operating Rules; and Item 11, page 6, of Burlington Northern Inc., Twin Cities Region Special Instructions No. 7, dated August 1, 1977, for your failure to arrange for inspection of the Elk River hot box detector by the signal maintainer after you had knowledge that X-18, Extra 5656 East, had a failed journal within twenty-five (25) miles of the Elk River hot box detector ou September 8, 1977."

Claimant's suspension came after an investigation held pursuant to the following notice:

> ". . ..for the purpose of ascertaining the facts and determining your responsibility in connection with alleged improper compliance of Operating Instructions for Rot Bearing Detectors - Office Readout concerning X-18, Extra 5656 East, passing Elk River Hot Box Detector, MP 43.8, about 12:40 A.M., September 8, 1977."

We have reviewed the transcript of the investigation in its entirety with particular attention to those items referred to us by the Carrier as being in support of its finding that the claimant was in fact guilty of the offense with which he was charged. We are unable to find that any evidence of probative value was produced at the hearing to support the charge. The transcript supports the claimant's position that he did in fact properly comply with ths office readout operating instruction. We will sustain the claim.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.

DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 22981, DOCKET NO. TD-22881
(REFEREE FRANDEN)

Claimant was charged in this case with:

". . . .improper compliance of Operating Instructions for Hot Bearing Detectors Office Readout concerning X-18, Extra 5656 East, passing Elk River Hot Pox Detector, MP. 43.8, about 12:40 A.M., September 8, 1977."

The Majority has concluded that no:

". . . .evidence of probative value was produced at the hearing to 'support the charge."

Yet the record contains the following responses by the claimant:

"272. Q. Rule 1K of the Train Dispatchers Manual reads as follows: 'Dispatcher must Immediately report failure in signals, signal apparatus, CTC, crossing protection and interlocking to signal maintainer or supervisor, and chief dispatcher.' Did you make any report regarding the reading on the Elk River hot box detector to either the Signal Maintenance Supervisor or the Chief Mspatcher; In this case, the Assistant Chief Dispatcher on duty, after your knowledge that X-18 had a failed journal after passing a detector which you have testified gave a satisfactory reading?

"A. No I did not."

* * * *

"Q. In regard to Item 11, do you understand that as a dispatcher, you must arrange for inspection of in-service hot box detector whenever a car is set out for a hot bearing discovered within 25 miles of an in-service hot box detector by notifying the signal maintainer in all such instances?

"A. Yes."

"279. Q. Did you call out the maintainer or notify any Signal Department personnel?

"A. No."

* * *

"281. Q. Mr. Martin, the question was, did the journal failure occur within 25 miles of the hot box detector?

"A. Yes."

"282. "Q. Md you have knowledge that the X-18 had a' failed journal within 25 miles of the hot box detector?

"A. I had knowledge they had a failed journal."

"283. "Q. Did you comply with this portion of Item 11?

"A. No." (Emphasis added)

Claimant was aware of his responsibility and in fact did admit his failure to so act when he had knowledge of trouble. To conclude that there is no evidence to support Claimant's guilt simply ignores the testimony of record. Such action necessitates our dissent.

P. V. Varga

W. F. Euker

P. E. LaCosse

J. E. Mason

J. R. O'Connell

LABOR MEMBER'S ANSWER TO DISSENT OF CARRIER MEMBERS TO
AWARD 22981 DOCKET TD-22881

Despite the protestation in the Dissent of the Carrier Members to Award 22981, Award 22981 correctly found "We are are unable to find that any evidence of probative value was produced at the hearing to support the charge."

The charge, as shown in Award 22981. was "alleged improper compliance of Operating Instructions for Hot Bearing Detectors Office Readout concerning X-18, Extra 5656 East, passing Elk River Hot Box Detector, MP 43.8, about 12:40 A.M., September 8, 1977." The Dissent of the Carrier Members to Award 22981 recognizes this to be the charge, although the Dissent left out the word "alleged."

The record contains the Operating Instructions Hot Bearing Detectors Office Readout mentioned in the charge, as well as the response of the Claimant to questions about these instructions as follows:

"262. Q. Rule 38 of the Train Dispatchers Manual, as revised by the Office of the Assistant Vice President Safety and Rules, June 3, 1977 reads as follows: "Operating Instructions Hot Bearing Detectors Office Readout

The office graphic display readout of the hot bearing detector must be reviewed during or immediately after the passage of each train. The alarm systems where employed must not be depended upon to detect conditions requiring a train to stop for inspection.

Trains must be stopped for inspection when graphic display indicates heat limits of bearing exceeds levels shown on the recorder, for chat particular location.

Trainmen must be alerted to any abnormalities observed which appear to be due to detection of heat on the train which do not reach the levels requiring train to be stopped.

Trainmen must be advised when graphic dispay (sic) indicates irregularities which may be due to. improper operation of the hot bearing detector system. Signal maintenance personnel shall also be notified promptly. ' "

" 'Some installations are equipped with dragging equipment detectors which will cause high deflection by both pens of the recorder. Train must be stopped when this is observed.

The tapes will be marked for each train and marked with the detector location, train identity and date.

When a train is stopped or advised of a defect, the tape shall be marked with the car number and noted as a defective journal or defective equipment'. In regard to the first paragraph of the Rule 38, do you understand that, as a dispatcher, the office graphic display readout of hot box detector must be reviewed during or immediately after the passage of each train?

A. Yes.

263. Q. Did you comply with this provision of Rule 38 of the Train Dispatchers Manual?

A. Yes.

264. Q. In regard to the second paragraph, do you further understand chat, as a dispatcher, you must stop trains for inspection when graphic display indicates heat limits of bearing exceeds levels shown on the recorder, for that particular location?

A. Yes.

265. Q. Did you comply with this provision of Rule 38 of the Train Dispatchers Manual?

A. Yes, there was no high reading.

266. Q. In regard to the third paragraph of Rule 38, do you further understand that, as a dispatcher, you must alert trainmen to any abnormality observed which appear to be due to detection of heat on the train which do not reach the levels requiring the train to be stopped?

/ -

A. Yes.

267. Q. Did you comply with this provision of Rule 38?

A. Yes.

268. Q. With regard to the fourth paragraph of Rule 38, do you further understand that, as a dispatcher, you must advise trainmen when graphic display indicates irregularities which may be due to improper operation cf the hoc bearing detector system and Signal maintenance personnel shall also te notified promptly?

A. Yes. "

"269. Q. Did you comply with this provision of Rule 38 of the Train Dispatchers Manual?

A. Yes.

270. Q. How did you comply?

MR. KASSERA

The requirements by the fourth paragraph is that you will advise the Signal Department or the train when abnormal indication is detected. In this case there were no abnormal indications.

MR. TYE

Mr. Kassera, your, objection will be made part of the record.

QUESTIONS BY MR. TYE ANSWERS BY MR. MARTIN

271. Q. Mr. Martin, did you comply with this provision of Rule 38 of the Train Dispatchers Manual?

A. Yes.".

As shown in Award 22981, Claimant's suspension was "for your failure to arrange for inspection of the Elk River hot box detector by the signal maintainer after. you had knowledge that' X-18, Extra 5656 East, had a failed journal within twenty-f ve (25) miles of the Elk River hot box detector on September 8, 1977". This action is not required by the Operating Instructions for Hot Bearing Detectors Office Readout. Award 22981 states "We have reviewed the transcript of the investigation in its entirety with particular attention to those items referred to us by the Carrier as being in support of its finding that the claimant was in fact guilty of the offense with which he was charged". Award 22981 then makes the statement "We are u nable to find that any evidence of probative value was produced at the hearing to support the charge", which was cited in part in the Dissent of Carrier Members to Award 22981. Award 22981 further states "The tra nscript supports the claimant's

position that he did in fact properly comply with the office readout operating instruction".

The Dissent of the Carrier Members to Award 22981 takes testimony from the transcript out of context in an attempt to show that the Claimant was guilty as charged, despite Award 22981 giving a full and complete explanation for the decision rendered. The Dissent cites Question and Answer number 272 but fails to give the next question and answer which is, directly related, viz:

"273. Q. Did you comply with this provision of Rule 1K of the Train Dispatchers Manual?

A. Yes, there was no abnormal reading or irregular reading on the tape."

The next quote in the Dissent is a portion of Question number 278 wherein Item 11 of Burlington Northern Inc, Twin Cities Region Special Instructions No. 7 is cited. Questions and. Answers numbers 279, 281, 282 and 283 cited in the Carrier Members Dissent to Award 22981 all relate to questions about this Item 11 of Twin Cities Region Special Instructions No. 7, which were not made a part of the charge in the notice given to the Claimant.

However, the Operating Instructions Hot Bearing Detectors Office Readout for train dispatchers are those contained in Rule- 38 of the Train Dispatchers Manual while Item 11 of Twin Cities Regaion Special Instructions No. 7 covers field readout detectors. The fact that the Elk River detector is an office readout detector if proven by the following testimony of Carrier's witness, Russell Bridgewater, Road Foreman, Mpls:

"37 Q. Is the Elk River detector a field or office readout detector?

A. It is an office readout."

Award 22981 did not ignore the evidence as the Dissent of the Carrier Members claims. Award 22981 is based on a full and complete examination and consideration of the entire record.

Award 22981 is a sound and well reasoned decision. The Dissent of Carrier Members to Award 22981 is without merit and it does not detract from Award 22981.

J. P. Erickson
Labor Member