

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22985
Docket Number CL-22782

Richard R. Kasher, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(**Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-8685**)
that:

1. Carrier acted in an arbitrary, capricious, unjust and **discriminatory** manner when on February 17, 1978, it assessed an actual suspension of thirty (30) days **against** Train Dispatcher P. E. Oliver, Jr.

2. As a result of its' arbitrary, capricious, unjust and discriminatory action Carrier shall now be required to:

- (a) Compensate Train Dispatcher P. E. Oliver, Jr., for all time lost as a result of said action on the part of the Carrier, February 3, 1978, to and including March 5, 1978.
- (b) Clear and expunge the thirty (30) day actual suspension from the record of Train Dispatcher P. E. Oliver, Jr., and any reference thereto.
- (c) Pay Train Dispatcher P. E. Oliver, Jr., interest in the amount of no less than 18 per cent compounded annually on the anniversary date of this **claim**.

OPINION OF BOARD: Claimant was employed by the Carrier **for** twelve (12) years prior to the assessment of the **30-day** suspension, which is the subject of this dispute. At the time discipline was imposed, he had a clean record. By letter dated February 6, 1978, Claimant was issued the following notice of formal investigation:

You are hereby charged that during your 7:00 a.m. to 3:00 p.m. tour of duty as Pocohontas District Dispatcher, at approximately **10:30** a.m., Friday, February 3, 1978, with your **failure** to properly protect **High Rail** Vehicle No. 2599, moving westward on **westward** main track between Bluefield, Virginia, and Bluestone Crossover, by giving Train No. 66, Engine 271, a proceed signal at Bluestone Crossover to proceed eastward on westward main into block occupied by **High Rail** Vehicle No. 2599.

The investigation was held on February 9, 1978. The transcript of that investigation revealed that **Claimant** did, in fact, set up a move that resulted in a near head-on collision between **eastbound** Train No. 66 and westbound **High Rail Vehicle** No. 2599 at **Bluestone** crossover. The unrefuted testimony of Chief Train Dispatcher, **G. R. Nuckolls**, revealed that Claimant removed a locking device from an activating button and gave Train No. 66 the **clear** signal at Cooper T-1 which caused the incident under investigation. The transcript **also** revealed that Claimant **knew**, but momentarily forgot, that switch lever 041, which controlled the west crossover, was flagged "out of service" and that Train No. 66 **could** not, as a result, be crossed over to the eastbound **main** track at Bluestone. Claimant apparently mistook the out of service tag for another, **and** thought that the switch was in service. **Claimant** eventually realized his error and called Train No. 66 with instructions to stop. **The** train was able to stop about three hundred (300) yards west of the high rail vehicle.

Claimant defended his actions of February 3, 1978, by stating that the traffic control equipment in the dispatching office for the **westbound** main track was not working properly. The Organization alleged that three (3) Signal Department **employees** could have been working on the section of track involved in the incident causing a "shunt" to exist which, in turn, caused a signal to give a clear aspect and disguise the development of the near head-on collision.

Claimant's defense excused **neither** his **momentary** lapse of **memory** nor the fact that he did actually set up the dangerous move. **Claimant's** responsibility for his activities in routing the two **movements** was irrefutable and the theory that the activities of the three (3) **employees** might have caused an equipment failure carries little weight in light of the uncontested **findings** establishing **Claimant's** culpability.

Regarding the discipline assessed, a thirty (30) **day** suspension was not out of proportion to the seriousness of the offense. This Board accordingly denies 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;

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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 29th day of September 1980.