

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23070  
Docket Number TD-22480

William M. Edgett, 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, by its action in assessing discipline in the form of dismissal of Claimant Train Dispatcher R. J. Gauer, of its Temple, Texas train dispatching office, following a formal investigation held November 11, 1976. The record of said formal investigation fails to support Carrier's charges and findings; error was committed by the Conducting Officer at the formal investigation; and Carrier failed to comply with Section 5 of Article VII. Therefore, the Imposition of discipline was arbitrary, capricious, unwarranted, and an abuse of managerial discretion.

(b) Carrier shall now clear Claimant R. J. Gauer's record of the charges (the Claimant was restored to service and Claimant waived the right to claim wages lost while out of service).

OPINION OF BOARD: Extra RI 373 East did not receive train orders and operated from Algoa to Galveston without having received authorization for the movement. Claimant had issued the orders and the record shows that the operator at Alvin failed to hang the orders or flag the train. There was no failure on the part of Claimant to carry out his responsibility and therefore the Board will sustain his claim for clearance of his record.

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

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**That** Claimant's record should be **cleared.**

A W A R D

Claim &stained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By **Order** of **Third Division.**

ATTEST:

*A. W. Paulos*  
Executive Secretary

Dated at **Chicago, Illinois**, this **21st** day of **November** 1980.

