

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25010
Docket Number TD-24878

Hyman Cohen, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Chesapeake and Ohio Railway Company

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

... appeal is hereby entered from the decision of Division Manager L. O. Robinson, . . . as contained in his letter dated October 9, 1981, Carrier File B of I 6904, in the discipline case of Train Dispatcher Harold D. Meade of the Columbus, Ohio train dispatching office . . . it is respectfully requested that you review this discipline case and direct that Mr. Meade be compensated for all time lost and that his personal record be cleared of the entry imposed thereon as a result of the discipline assessed (10 days actual suspension) ..."

OPINION OF BOARD: After an investigation held on September 30, 1981, the Claimant was found at fault for failure to provide protection for track car authority issued by him on August 21, 1981 at approximately **11:38** a.m. in violation of Operating Rule **704(g)**. As a result, he was suspended for ten (**10**) days.

The Claimant was working as an Extra Dispatcher on the Carrier's Ohio Division on August 21, 1981. This territory includes the Northern Subdivision from Columbus, Ohio to Russell, Kentucky. On the Northern Subdivision is a section of track lying between KN Cabin and VA Junction. For a train running from **KN** to VA, KN Cabin is the last signal controlled by the Dispatcher until VA Junction.

On August 21, Track Foreman Johnson secured authority to operate track repairing equipment within the area enclosed by KN and VA. This work authority (Train Order **No.902**) ran from **8:07** a.m. to **11:30** a.m. at which time the track equipment was supposed to be off the main line. At **11:30** the equipment was still on the track because Track Foreman Johnson had gone to VA Junction to try to get an extension on his work authority.

Shortly before **11:30** a.m. the Claimant gave authority to the Engineer of Extra Train 7606 to proceed and the train passed **KN** Cabin at **11:29**, one minute before Track Foreman Johnson's work authority expired. Moreover, the claimant gave Track Foreman Johnson's authority to move the equipment at **11:38**, 8 minutes after the expiration of the work authority and 9 minutes after Extra Train 7606 entered the area. Since Train 7606 was moving slowly, it was able to stop before a collision occurred.

Based upon the record, the Board cannot conclude that the Claimant failed to provide proper protection for the track authority which he issued at approximately **11:38** a.m. on August 21, 1981. When the claimant went on duty at **8:00** a.m. he issued an additional "work authority" to Track Foreman Johnson which stated **inrelevant** part:

"You may work under traffic on main track 0807 until 1130 8-21-81 between Mile Post 47 and Mile Post 49 without flag protection per Rule 707-F. Trains will enter work limits but not pass work force without a yellow hand proceed signal from an employee or oral authority from employee Johnson in charge."

Under Rule 707(f) if Track Foreman Johnson's equipment was not clear of the main track five (5) minutes before 11:30 a.m. or at 11:25 a.m. he was required to provide flag protection against trains approaching from either direction unless a new order has been issued. Track Foreman Johnson acknowledged that he did not provide flag protection in accordance with Rule 707(f). Nor did he leave any instructions with the two (2) operators at the work site concerning the movement of trains. Track Foreman Johnson further acknowledged that between 11:30 a.m. and 11:38 a.m. his work force was on the main track with no protection. Track Foreman Johnson was aware that trains were approaching the work area after 11:25 a.m. The record discloses that Track foreman Johnson was required to provide flag protection in both directions after the Claimant issued the authority for a Motor Car Line Up, effective 11:38 a.m., until 12:15 p.m. The Claimant had no reason to believe that Track Foreman Johnson would not comply with the flagging requirement of Rule 707(f) after 11:25 a.m. Compliance with Rule 707(f) would have effectively protected the equipment and work force on the track, despite the issuance of the Motor Car Line Up authority.

The Carrier contends that the Claimant violated Operating Rule 704(g) by the authorization he issued at 11:38 for the Motor Car Line Up since no protection was provided against trains entering the work site. Had the flagging requirement under Rule 707(f) been satisfied by Track Foreman Johnson, such protection would have been provided. Accordingly, it is the Board's judgment that the Carrier has not satisfied its burden that the Claimant committed an infraction.

The Claimant is to be compensated for the ten (10) days that he was suspended and that his personal record be cleared of the alleged infraction.

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,

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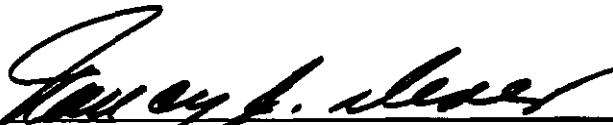
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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

