

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25087
Docket Number TD-24877

Hyman Cohen, Referee

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

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

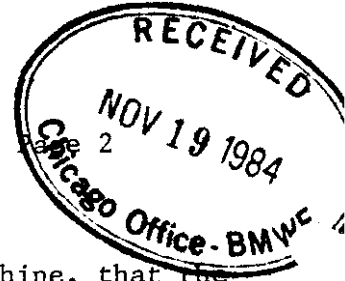
"... appeal is hereby entered from the decision of Division Manager L. O. Robinson...as contained in his letter dated October 9, 1981, Carrier File B of I 6902, in the discipline case of Train Dispatcher R. W. Jackson of the Columbus, Ohio train dispatching office...it is respectfully requested that you review this discipline case and direct that Mr. Jackson 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: Following an investigation held on September 10, 1981, the Claimant, a Train Dispatcher at the Carrier's Columbus, Ohio train dispatching office was suspended for ten (10) days for the following reason:

"*** failure to maintain proper protection for Extra 6654 West at Maysville, Kentucky between 11:30 p.m. August 26, 1981 and 12:30 a.m. August 27, 1981 in violation of Operating Rule 957."

While operating the TCS (Traffic Control System) console during the period in question, the Claimant had given Extra 6654 East authority to use both Tracks No. 1 and 2 at Maysville until 12:30 a.m. At the time, the Claimant placed blocking devices in the hold on the duplicate of his model board to prevent the absolute signals at West Maysville and Springdale (the eastern point) from displaying indications authorizing the movement of any other train into that area. With the insertion of such blocking devices, an amber light was illuminated on the model board showing that the territory was protected. When the third shift Train Dispatcher Kelly arrived in the office to relieve the Claimant, he told her that he had given Extra 6654 East authority to use both Tracks No. 1 and No. 2 at Maysville until 12:30 a.m. Eastward Train CD 98 was immediately west of signal 4E at West Maysville. As Train Dispatcher Kelly was about to assume her duties, the Claimant noticed an indication on the model board that either Train CD 98 had passed the red signal at West Maysville or that a false track indication had occurred. It was subsequently learned that Train CD 98 had passed signal 4E and was proceeding to Maysville behind Extra 6654 East. Extra 6654 East was then instructed to clear the way for Train CD 98. There was no damage, injury or delay to the trains.

The Carrier asserts that the crux of the dispute turns on whether the Claimant properly performed a check of the system prior to applying the blocking device to protect Extra 6654 East. The Board finds that the Claimant coded the appropriate switches and observed that the control functions corresponded with the field indication prior to the time he placed the blocking devices on the machine and issued the exclusive authority to Extra 6654 East. No evidence was presented by the Carrier to lead the Claimant to believe that when he "knocked down" or cancelled the auto clear function with respect to Signal 604 (West Maysville),



roughly 24 minutes before he placed the blocking devices on the machine, that the signal-would subsequently clear at 11:36 p.m. .

The Carrier's case relied primarily on the testimony of L. W. Johnston, Assistant Superintendent of Train Operations. His testimony disclosed that he was "not fully trained in signaling" and his responses to several relevant questions on what occurred or what could have occurred on August 27, 1981, were preceded by the phrase "as far as I know" or just simply "I don't know". Furthermore, when asked why the Carrier issued the charge, Johnston replied, "It was my feeling at the time that the Dispatcher had failed to provide proper protection." (Emphasis added). By contrast, the Claimant's testimony was substantiated by Train Dispatcher Kelly and her immediate supervisor Assistant Chief Dispatcher **Pezley** who stated that lever blocks had been placed as required.

The Carrier produced evidence in the record to support a possibility that the Claimant committed an **infraction** rather than furnishing sufficient evidence to support a reasonable inference of fact on which it assessed discipline. In short, the Carrier did not satisfy its burden of proving that the Claimant is guilty of the offense stated in the charge. The Claimant is to be compensated for the ten (10) days he lost, and his personnel record is to be cleared of the discipline and the charge on which it was based.

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:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.