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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25264
Docket Number TD-25327

Paul C. Carter, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

We ask that the discipline [30 days suspension, plus disqualification as Train Dispatcher] assessed as a result of investigation on Feb 18th and Feb 22nd, 1982 be withdrawn and removed from Mr. Clintons record and that he be reinstated as Train Dispatcher

OPINION OF BOARD: The record shows that Claimant was employed by the Carrier as a Train Dispatcher on what is known as Carrier's Metropolitan Region, New York, New York. At the time of the occurrence giving rise to the Claim herein, Claimant had been in Carrier's service approximately thirty-five years, and as a Train Dispatcher for almost nine years. On February 12, 1982, Claimant and a Block Operator were notified by Carrier's Transportation Superintendent to attend a formal investigation on February 18, 1982, on the charge:

'Arrange to attend a formal investigation at 10:00 AM., Thursday, February 18, 1982 in the Third Floor Conference Room, 347 Madison Avenue, New York, N.Y. to develop the facts and determine your responsibility, if any, in connection with alleged improper application of a BDA and misrouting of Train 701 to Track #3 at Glenwood, which was occupied by Speno Work Train Engine 1902 with Form 19, Train Order #301, at approximately 12:55 AM, February 12, 1982.

General Instructions - Notes 2 and 3 of CT-405, memo from Superintendent R. Ashton to all Dispatchers, dated March 6, 1981 - Subject Tower operators (BDA's), Rules 827-A, 908, 909, 913, 914 and 915 of the Rules of the Transportation Department may be involved.

You may arrange to have a duly accredited representative and/or witnesses present, if you so desire, in accordance with your applicable schedule of agreements."

The investigation commenced on February 18, 1982, was recessed because of the non-attendance of the Block Operator; again commenced on February 22, 1982, and completed on that date so far as the Claimant herein was concerned. Following the investigation, Claimant was assessed discipline of thirty days suspension and disqualified as a Train Dispatcher for having been found guilty of the following outline of offenses:

"Improper application of a BDA resulting in misrouting of train No. 701 to Track No. 3 at Glenwood, which was occupied by Speno work Train, engine 1902; improper transmittal of train order No. 302 and failure to properly record BDA on Train Dispatcher's sheet on February 12, 1982 in violation of General Instructions, Notes 2 and 3 of the CT 405; memo from Superintendent R. Ashton to dispatchers, dated March 6, 1981, (Subject Tower Operators (BDA's)) Rules 827-A, 908 and 909 of the Conrail Rules of the Transportation Department."

A copy of the transcript of the investigation has been made a part of the record. The investigation was conducted in a fair and impartial manner.

The Organization contends that the Carrier failed to give Claimant sufficient notice of the exact offense, as contemplated by Rule 18(d) of the applicable Agreement and, further, that the Carrier failed its burden of proof of the so-called vague "accusation" against Claimant. The Board considers the terms "exact" and "precise" as synonymous. The charge as made by the Carrier meets the standards required by this Board for a precise or exact charge. While the Carrier is not required to cite a specific rule in the notice of charge, it will be noted that in the charge herein specific rules are cited that may be involved. We think that the principle was well set out in Award No. 20285, where the Board held:

"Over the years we have held that the fundamental purpose of the notice of charge is to afford the employee an opportunity to prepare his defense against the Carrier's accusations. For example, in Award 17154 we said:

'Where the notice is sufficient for Claimant to understand what is to be investigated (Award 12898), and precise enough to understand the exact nature of the offense charged (Awards 11170 and 13684)- such notice will not be held to vitiate Claimant's rights under the Agreement for adequate notice...'

Rather than to provide technical escape hatches to avoid discipline, Rules such as 8(b) above were designed to protect employees and to prevent surprise or misleading accusations by Carrier. In the case before us we do not find that the omission of the specific rules in any manner prejudiced Claimant's defense; he and his representative were clearly aware of the meaning of the charge and the particulars alluded to by the Carrier."

See also recent Award No. 24989 and the others cited therein. We find that the notice of charge issued to the Claimant herein met the requirement of the Agreement.

In Third Division Award No. 17338, cited with approval in recent Award No. 24989, we held:

"***prime responsibility devolves on a train dispatcher to insure the safe movement of trains."

The Board is fully cognizant of the responsibility of a Train Dispatcher for the safe operation of trains within his jurisdiction.

Upon careful review of ~~the~~ rather lengthy transcript of the investigation, we find that Claimant did not comply with Carrier's rules and instructions in the handling of Reports, Train Orders and Form A's in connection with the incident involved. It is fortunate that a collision did not occur between train No. 701 and the **Speno** work train. The fact that others may also have had some responsibility in the matter, did not relieve Claimant of his responsibility for compliance with the Carrier's rules and **instructions**. Severe discipline was warranted; however, considering Claimant's years of service with the Carrier and his relatively **good** record, having been assessed a ten-day suspension in June, 1971, and a five-day suspension in January, 1982, permanent disqualification as a Train Dispatcher was excessive. We will award that Claimant be restored to his former seniority as a Train Dispatcher, with the right to exercise that seniority in accordance with the applicable Agreement. We will deny any claim for compensation as a result of the thirty-day suspension or as a result of disqualification as a Train Dispatcher.

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

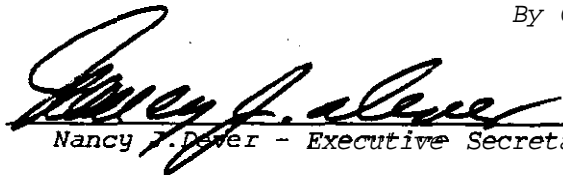
That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

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

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, **this** 28th day of February 1985.