

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25270
Docket Number TD-25512

Paul C. Carter, Referee

(American Train Dispatchers Association
(on behalf of **Appellant** D. R. Hedrick

PARTIES TO DISPUTE: {

(Atchison. Topeka and Santa Fe Railway Co.

STATEMENT OF CLAIM:

Appeal of July 1, 1982 dismissal of Train Dispatcher D. R. Hedrick, with the request that he be restored to service with compensation for all time lost in excess of sixty (60) days.

OPINION OF BOARD: Claimant with about two years of service, was employed by the Carrier as a train dispatcher at San Bernardino, California.

The Carrier advises that on May 24, 1982, at about 12:30 P.M., Claimant authorized a Track Supervisor to occupy the north track and proceed from Oro Grande to Victorville and to call when he had gotten into the clear. The Track Supervisor had just gotten clear of the main line at Victorville when a train, the LAF UP 2508 West. overtook him and went by the Supervisor. On May 27, 1982, Claimant was notified to appear for an investigation at 9:00 A.M., June 3, 1982, on the charge:

"You are hereby notified to attend formal investigation in the Superintendent's Office, San Bernardino, 9:00 a.m., June 3, 1982, concerning your alleged failure to protect working time given Track Supervisor Walters between Oro Grande and Victorville at approximately 12:30 p.m., May 24, 1982, while working as First District Dispatcher, to determine the facts and place responsibility, if any, involving possible violation of Operating Department Rules A, C, K, 332(A) and 752(B), 1975, Form 2625 Standard.

You may arrange for representation in line with the provisions of Agreement or Schedule governing your working conditions and you may likewise arrange for the attendance of any desired witnesses.

Please acknowledge receipt of this notice on the attached copy and return to my office promptly. Sincerely, S/D D. Didier, Superintendent."

The investigation, or hearing, was postponed at the request of the Claimant, and conducted on June 10, 1982, with the Claimant and his Representative in attendance.

The Operating Rules referred to in the letter of charge read:

"A. **Safety** is of the first importance in the discharge of duty.

Company rules are designed for safety and must be obeyed.

The service demands the faithful, intelligent and courteous discharge of duty.

* * *

C. **Employees** must know and obey the rules and special instructions. If in doubt as to their meaning they must ask their supervisors **for** an explanation.

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K. **Employees** must not be careless of the safety of themselves and others. They must remain alert and attentive and plan their work to avoid injury.

* * *

332(A). **Within TCS** limits, gangs, track cars **or** machines may occupy a **track** or tracks, within specified limits, without line up **or** flag protection **provided employe** in charge obtains permission from the control station, specifying time limits, and track or tracks to be used. **Employe** requesting track, time and limits must give his **name**, occupation, and location. Permission granted must be written on prescribed form and repeated to the control station. **Employe** to whom such permission is given must **report** to the control station when the track named within the specified limits, is clear of gangs, track cars **or** machines. If additional time is needed, it must be requested from the control station before expiration of the time previously authorized.

When such permission is given, control station must block all signals governing movements into such limits at 'stop', and blocks must not be removed until **employe** to whom such permission was given has reported the track **or** tracks named, within the specified limits, clear of **gangs**, track cars and machines.

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752(B). **Employees** must not be negligent, indifferent to duty, insubordinate **or** quarrelsome."

A copy of the transcript of the hearing, or investigation, has been made a part of the record. Upon review, we find that the hearing was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights were violated. There was substantial evidence adduced at the investigation, including Claimant's statement, in support of the charges against Claimant. It is clear the Claimant became confused as to the number of trains operating in his territory. Claimant was clearly guilty of violation of the rules. A Carrier cannot be expected to continue in its service as a Train Dispatcher a person who becomes confused as to trains operating in his territory and who, by his actions, would set up a situation such as the one here. It is fortunate that the Track Supervisor was not overtaken by the train that passed him almost immediately upon his getting clear of the main line at Victorville. The Supervisor simply was not protected against that train. As stated in Award 17338, cited with approval in our recent Award 24989:

"...prime responsibility devolves on a train dispatcher to insure the safe movement of trains operating within his jurisdiction."

Considering Claimant's actions in the present case, his short service with the Carrier, and his prior discipline record, which was far from satisfactory, the Board does not find the Carrier's action in dismissing Claimant from service to be arbitrary, capricious or in bad faith.

As we have decided the dispute on its merits, which we prefer to do in a case of this kind involving dismissal, rather than on technicalities, we do not consider it necessary to pass upon the procedural time limit issues raised.

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

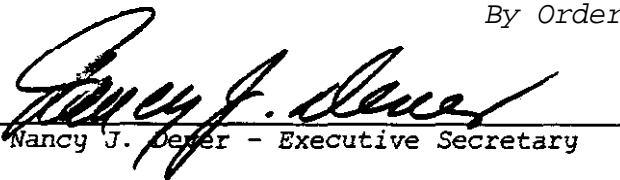
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Decker - Executive Secretary

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