

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25311
Docket Number TD-25288

Marty E. Zusman, Referee

(American Train Dispatchers Association

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

" . remove the discipline from Mr. Catanzarite's record and compensate him for time lost...[re investigation held 4/8/82, 10 days deferred suspension, plus 10 days actual suspension from previous record]. "

OPINION OF BOARD: ' By letter dated March 23, 1982, the Claimant, J. P. Catanzarite, was notified to attend a formal investigation with regard to the following charge:

"To determine your responsibility, if any, for your alleged failure to protect the movement of 26 cars destined for Providence, RI from Attleboro, MA on Train WNRE-20, while you were on duty as the Old Colony-Maybrook Dispatcher at Springfield, MA on March 22, 1982.'

With respect to the above charge a formal investigation was held, after postponement on April 8, 1982, and thereafter, Claimant was notified of a decision of guilt and an assessed penalty of ten(10) days deferred suspension for the above charge. In fact, there being a previous deferred suspension activated under the controlling Agreement with this finding of guilt, the Claimant received a ten (10) day actual suspension from his previous record.

During the progression of this claim on property in both Transcript and letters Of appeal, the Organization raised a number of issues. After the charges were presented for the record, Claimant's representative protested "that we have come here today without full knowledge of what rule or rules or special instructions were violated and could not prepare a proper defense due to the improper notice...". The record indicates that there exists some interpretive variance between the charges as stated in the Notice of 'Investigation* and the eventuated proceeding. On balance, this Board holds that the variance was not material, did not significantly mislead the Organization and did not preclude a fully prepared defense, as evidenced from the proceedings (see Third Division Awards 11170 and 12255).

Additionally, the Organization contended on property other issues such as the availability of witnesses and the lack of a "fair and impartial hearing". With respect to other witnesses, this Board does not find any reasonable basis for that contention. A postponement had been offered and further they were not "pertinent witnesses" (see Third Division Awards 23857, 20984). With respect to the issue of "fair and impartial hearing", as raised in the May 18, 1982, letter, contending that the Hearing Officer did not preside fairly, the issue is more complex. That Officer admitted to having decided Claimant's guilt with the Division Superintendent before the proceedings. While this Board **is** certainly mindful of the seriousness of this issue, it does not find substantiation for this charge in the whole of the Transcript. The investigation followed procedurally correct standards of presentation, cross-examination and investigation providing a "fair and impartial hearing".

As to the facts in the instant case, as noted above, the Carrier charged the Claimant with failure to "protect the movement" of cars and both Carrier and Organization **were** at variance over the interpretation of that phrase. The differing interpretations of the charge come from the facts at bar. On March 22, 1982, Claimant was assigned as an extra Train Dispatcher and as such, was responsible for Train **WNRE-20** to pick up twenty-six (**26**) cars at Attleboro, MA and see that they were moved to Providence, RI. During the investigation it became apparent that Carrier required those cars move immediately and directly to Providence, RI when **WNRE-20** arrived at Attleboro before **Train WNRB-20** **was** side-tripped to East Junction Secondary track. **That** side-trip **would bring** that train back to Attleboro from where it **would** continue to Providence. However, Carrier argues that the **twenty-six (26)** cars were priority and that Claimant clearly admits guilt when responding to the following question in pertinent part:

"At **Attleboro** (Branch 5)--**26-0** for Providence for **WNRE-20** to **get**,' you did not follow through on it until Mr. **Motte** brought it to your attention?"

Claimant answered 'No, I did not inform the train **crew**'. The Organization maintains that the above testimony is not an admission of guilt. It points out that the Claimant was a spare Train Dispatcher called to **work** that day and from a purely **evidentiary** point of view Claimant followed all documented instructions. **No** evidence was ever introduced that **would** suggest Claimant should move the **cars** to Providence, RI first or should have known to do so and so ordered the train crew. The Claimant testified as to why the order was not given on March 22nd as follows:

"**He** was scheduled to go on to East Junction Secondary and when he returned from East Junction Secondary I **would** have informed him to pick up the cars for Providence. There was nothing specifically stated on the Chief Dispatcher's **transfer** that **WNRE-20** was to handle the cars to Providence before going on the East Junction Secondary:

It follows from the **case** at bar that the central issue is whether the Claimant knew or should have known of the **preferenced** movement of the twenty-six (26) cars to Providence, before the side-trip was made. This point is critical, since it remains incumbent upon Carrier to establish an asserted violation by substantive evidence. The evidence of record establishes that those cars were moved from Attleboro, MA to Providence, RI by Train WNRE-20 on the date in question. It establishes that the first time Claimant was aware of the need for cars to move first to Providence, before the side-trip **was** made, **was** at 11:20 and at **that** time he so ordered the move. As such, without substantial evidence to find Claimant in violation of any instruction in allowing Train WNRE-20 to take the side-trip first, we find that Carrier did not meet its burden in this case. There is nothing in the record to substantiate that the Claimant, in these events did not act in a reasonable manner.

Carrier clearly has the right to require and expect its **employees** to comply with its Rules and instructions correctly and rapidly. A delay in the movement of cars is a most serious offense in that it may damage products, disturb contracts, cost monetary losses and undermine the transportation credibility of the Carrier in the business community. In the case at bar, however, this Board finds that it must rule that this delay was without the burden of proof necessary to substantiate a finding of guilt (Third Division Award 13691; 19506). As such **we** must sustain the **claims** as presented to the Board.

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. Dover - Executive Secretary

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