NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25384
THIRD DIVISION Docket Number TD-24527

W. S. Coleman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Railroad Company

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

(a) Burlington Northern Incorporated (hereinafter referred to as "the Carrier.! violated the Agreement between the parties, Article 24 thereof in particular, when it assessed thirty (30) days' suspension as discipline to train dispatcher M. D. Rosemore in connection with formal investigation, held at Minot, North Dakota on May 30, 1980. The record is clear that the Claimant committed no rules violations and that he was not guilty of the charge. The Carrier has refused and continues to refuse to reimburse the Claimant for time lost and to clear his record of the charge which is an arbitrary, capricious, unreasonable abuse of managerial discretion.

(b) Because of such violation the Carrier shall be required to reimburse the Claimant for all time lost and clear the Claimant's record of all reference to the matter here involved.

OPINION OF BOARD: Claimant, M. D. Rosemore, a Train Dispatcher in Minot, North Dakota, was assessed a thirty-day suspension, effective June 18, 1980, through and including July 17, 1980, for his failure to determine that a train had completed its movement safely through lined route before changing the CTC line-up.

In the handling of this matter on the property, the parties have each asserted procedural defects. While the contentions raised are not without merit, the Board concludes that, in this case, the matter be disposed of on its own merits. By this decision, however. the Board in no way minimizes the importance for both parties to follow the agreed upon prescribed procedures in their dealings with each other.

On the merits Carrier argues that Claimant was guilty of conduct that cannot be condoned. The Transcript of the investigation contains the testimony of the Dispatcher working the position before Claimant. He stated that the CTC Board was functioning properly. The Transcript also contains the testimony of the General CTC Maintainer who checked the equipment after the incident and he could find nothing wrong with it. The Organization failed to present any evidence of its assertion that the equipment malfunctioned.

The Organization argues that it was impossible for Claimant to have made the change in the position of the switches, as alleged by Carrier. It states that 'Had Train 01-080-13 not yet proceeded through White Earth it would have been impossible for the Claimant to initiate the control requests made unless there in fact had been a malfunction" and points out that Carrier provided no conclusive evidence that a malfunction did not occur.

Claimant alleged that the signals and the CTC Board had indicated to him that one train, Train 80, had passed White Earth and that he had the engines of a second train, Train 81, in a siding, when, in fact, Train 80 had not passed. As Claimant noted, "...80 damned near went on top of...81". Within ten minutes or so of the incident, Train 80 asked Claimant if the CTC Board now showed that it was going through White Earth and Claimant replied, "Yes it does, it shows the track light is on between the switches at White Earth, the east switch at White Earth and the track light on just east of the east switch at White Earth is on".

A great deal of time was spent at the investigation looking into the events on the day in question and the operation of the CTC Board. Based on a preponderance of the evidence, the Hearing Officer determined that Claimant was responsible for failing to determine that Train 80 had completed its movement safely through lined routes and that the incident had not resulted from equipment malfunction. We can find no reason to dispute that determination. The Hearing Officer had an opportunity to evaluate in detail the technical presentations made by the witnesses. In reviewing the record, this Board can find no basis on which to conclude that he did not properly evaluate that information.

In light of the seriousness of this infraction, a thirty-day suspension is not excessive.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.