

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25631
Docket Number TD-24486

Martin F. **Scheinman**, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

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

"Please arrange to clear the records of train dispatchers L. A. Erickson and G. M. Lindahl and compensate them for all losses sustained, in accordance with Rule **24(c)**, resulting from discipline which was assessed as a result of the investigation of December 9, 1980."

OPINION OF BOARD: At the time this dispute arose, Claimants, L. A. Erickson and G. M. Lindahl, were assigned as Train Dispatchers to Carrier's Mason City, Iowa facility. On December 4, 1980, Claimant Erickson was assigned to hours of 7:00 a.m. to 3:00 p.m., whereupon he was to be relieved by Claimant Lindahl.

On that day, southbound trains were being stopped at Willowbrook, Missouri, account of Carrier's track laying program. Sometime in the early afternoon, Extra Train 6909 South and Extra Train 883 South were parked on the main track in the Willowbrook vicinity. At about **12:30** p.m., Extra Train 6866 South arrived in the area and parked on the main track in accordance with instructions given by Claimant Erickson. Torpedoes were placed behind it.

Later that afternoon, Extra Train 6814 South, heading for **Willowbrook**, ran over the torpedoes and found Extra 6866 South parked on the main line without additional protection.

As a result of the incident, Claimants were ordered to appear for an investigation in connection with the following charge:

"Your responsibility in connection with your failure to provide rear end protection for Extra 4866 South at Willowbrook, Missouri, Kansas City subdivision, between the hours of approximately **12:40** p.m. and **7:30** p.m., on December 4, 1980, while assigned position train dispatches on this date."

Subsequently, each Claimant was assessed a thirty days' deferred suspension.

The Organization contends that there is insufficient evidence in the record to **warrant** finding Claimants guilty. First, it insists that sufficient protection for the Extra 6866 South was provided by the placement of torpedoes behind the rear of the train. Second, the Organization maintains that Claimants acted properly since they knew that no trains would be moving south for a number of hours after the 6866 was held near Willowbrook. Finally, the Organization submits that no other protection could be reasonably provided for the Extra 6866 South.

Under these circumstances, the Organization submits, Claimants acted responsibly on December 4, 1980. Accordingly, it asks that the claim be sustained in its entirety.

Carrier, on the other hand, asks that the claim be rejected. First, Carrier contends that the notice of discipline was not appealed to the proper Carrier official. Thus, Carrier argues that the claim is jurisdictionally defective.

On the merits, Carrier contends that Claimants should have issued appropriate orders to train crews at Willowbrook advising them of the position of Extra 6866 South. Had this been done, Carrier submits, **the** Extra 6814 South would not have run over the 6866 South's torpedoes. Thus, Carrier insists that the record establishes Claimants' guilt. Accordingly, it asks that the claim be denied.

Several introductory comments are appropriate. Rule **24(a)** requires that copies of Carrier's decisions be furnished to Claimant and his or her representative. Here, Carrier failed to timely furnish a **copy** to the Organization's representative. Such failure is ordinarily a non-reversible error. While we shall not sustain the claim on this basis, we remind Carrier of its contractual obligation to provide copies to all individuals designated in Rule 24. Failure to comply with this rule in the future may well result in a sustaining award on this basis alone.

Second, it is clear that the Organization complied with the Agreement when it appealed Carrier's denial to the Manager of Labor Relations, instead of the Division Manager. As noted in Award No. 25054, appeals under Rule 24 are different from appeals pursuant to Rule 20. Therefore, the Organization acted in accordance with the Agreement when it sent its appeal directly to the Manager of Labor Relations.

As to the merits, we are convinced that the claim must fail. Clearly, Claimants knew that Extra 6866 South, Extra 6909 South and Extra 883 South were parked in the vicinity of Willowbrook. Claimants also knew that there was limited room for trains in that vicinity. As such, it was Claimants' duty to inquire which, if any, of these trains were on the main line. If Claimants had so inquired they would have realized that 6866 south needed additional protection for other trains which were to be dispatched in a southerly direction toward **Willowbrook**. The issuance of a Form **J** order would have provided such protection.

The Organization argued that Claimants believed the Extra 6866 south was on the siding and not the main line. However, they failed to confirm this belief with the train's crew. In addition, they knew that Extras 883 and 6909 South were on the main line. Thus, additional protective orders were still required.

Under these circumstances, Carrier's assessment of a thirty-day deferred suspension is not excessive. Accordingly, and for the foregoing reasons, the claim must fail.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.