

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25812
Docket Number TD-24014

Herbert Fishgold, Referee

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

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

"(a) The Chicago and North Western Transportation Company (hereinafter referred to as 'the Carrier') violated the current Agreement (effective July 1, 1976) between the parties, Rule 24 thereof in particular, when the Carrier failed to render decision in writing within seven calendar days after the completion of the investigation by furnishing the decision in writing to the train dispatcher affected within the time limit provided and when the Carrier applied the discipline of disqualification as a train dispatcher to R. R. Koppelman (hereinafter referred to as 'the Claimant') based on the investigation held on December 4, 1979. The record, including the investigation transcript, shows that the Carrier did violate the time limits contained in the Agreement and fails to support the discipline assessment made by the Carrier and, therefore, the imposition of the discipline of disqualification as a train dispatcher was arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) The Carrier shall now be required to compensate the Claimant for all losses sustained as a result of this action in accordance with Rule 24(c) and clear the Claimant's personal record of the charges which allegedly provided the basis for said action."

OPINION OF BOARD: Claimant was a Guaranteed Assigned Dispatcher who was working the Adams desk on Carrier's Wisconsin Division on October 5, 1979. His shift began at 3:59 P.M. At approximately 4:10 P.M. that date, the Adams operator called Claimant to get clearance orders for Extra 964 East. He received no answer. Ten minutes later, the operator again called and was informed by Claimant that he was still making a transfer. Claimant did not give the train clearance until 5:04 P.M. During that time, the crew of Extra 964 was eligible for terminal delay pay and the operation of Adams yard was blocked by the train, which was blocking the yard engine and doubled onto the yard tracks.

Following the incident, an investigatory hearing was held, as a result of which Claimant was disqualified as a train dispatcher. He thereupon reverted, through exercise of his seniority, to a non-Dispatcher position covered by another agreement. Claimant's appeals from his disqualification were denied by the Carrier, and the matter was brought before this Board.

It is the position of the Organization that Claimant's conduct was a legitimate exercise of judgment under special circumstances, which produced no harm to the Carrier, since the train would have been delayed down the line by another meet, even if it had been cleared to leave Adams without any delay.

The Carrier argues that Claimant was properly disqualified for his poor judgment in his failure to timely clear Extra 964.

The parties each raised procedural and jurisdictional arguments, some on the property and some before the Board. The disciplinary decision was timely rendered by the Carrier, having been mailed to the Claimant within the prescribed time limit. Third Division Awards 10254, 12001, 13219, and 17588. The Organization's appeal of the discipline was timely registered with the proper appeal officer pursuant to Rule 24(b). Third Division Awards 7021, 19918, 20973, and 17156. We turn to a discussion of the merits of the dispute.

Under the Board precedent, the Carrier's determination that a disciplinable offense has occurred will not be overturned if supported by substantial evidence in the record. Determinations as to credibility and weight of evidence are not to be disturbed by the Board. See, for example, Third Division Award 19962 and numerous other awards.

Here, the Organization concedes that delay took place in Claimant's release of Extra 964. It argues that the delay is excused by the circumstances, under which Claimant was delayed talking to Carrier's Chief Dispatcher Mohr and had to set up a meet of two other trains prior to clearing Extra 964, for which he had difficulty establishing communications. The Board is not persuaded. Claimant is responsible for the expeditious movement of trains under his control; it was his obligation to carry out his duties during Mr. Mohr's presence or to indicate to Mr. Mohr the necessity to set up the meet and release Extra 964. The record indicates that there was another, reasonable way in which the meet could have been set up without the delay through the use of commercial telephone; Claimant did not utilize that method.

The Organization argues further that no damage or delay resulted from Claimant's failure to act, since the train whose release was delayed would have been stopped at the next passing siding up the line by another meet. Again, the Board is not persuaded. The Adams yard was plugged by the delay in Extra 964's departure. The delay obligated the Carrier for additional terminal delay payments to Extra 964's crew. At the time Claimant delayed the train, he could not know with certainty that there would be a delay further up the line. In short, loss to the Carrier did result from Claimant's delay; further loss might have resulted. Claimant's explanation of the justification for the delay smacks of after-the-fact justification.

The Board concludes that the Carrier's determination that a disciplinable offense had occurred is supported by substantial evidence in the record. Its determination will not, therefore, be overturned.

Disqualification is a severe penalty, although mitigated to some extent in this situation by Claimant's exercise of seniority in another craft. However, when Claimant's prior record is viewed in light of the high level of responsibility of the Dispatcher craft and the extreme importance of sound judgment in carrying out its duties, the Board does not find Claimant's disqualification under the circumstances described to be arbitrary or excessive. Accordingly, the Claim is denied.

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. Dever - Executive Secretary

Dated at Chicago, Illinois this 12th day of December 1985.