

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25831
Docket Number TD-25887

John E. Cloney, Referee

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

STATEMENT OF CLAIM:

"...request that Train Dispatcher M. F. Hutchison's record be cleared of this unjust and unwarranted discipline [5 days deferred suspension] and that he be compensated for all losses sustained as a result in accordance with Rule 24(c) of the Train Dispatcher's Agreement."

OPINION OF BOARD: Claimant M. F. Hutchison received a five day deferred suspension after an investigation conducted on August 2, 1983 to determine "Your responsibility for delay to NPBIA, the Extra 5082 East, between approximately 9:30 P.M., July 26, 1983 and 1:15 A.M., July 27, 1983".

The investigation involved two Dispatchers; Claimant, whose tour began at 11:00 P.M. on July 27 and Wagaman, the Dispatcher he relieved. The investigation disclosed train NPBIA (North Platte-Blue Island) was carrying perishables and for about one month had been designated as one of three trains whose performance was closely followed by operating management. Trainmaster Weedman testified he was sure all Dispatchers were aware of this designation but notices regarding the train's priority were dated after the July 26 incident.

NPBIA departed Boone, Iowa at 10:10 P.M. on July 26. This was one hour and 5 minutes behind schedule. It arrived at Marshalltown, Iowa at 11:07 P.M. Another eastbound train, KAPRA (Kansas City-Proviso) had arrived at Marshalltown at 10:25 p.m. It set out 38 cars and picked up 60, finally departing at 12:10 A.M. Train NPBIA was held behind KAPRA and followed it out of Marshalltown. The Carrier contends the delay resulted in NPBIA missing its connection in Chicago.

A diagram shows crossovers at Mile Post 153.9, 148.5 and at 12th Avenue, to the east of the Marshalltown Yard. At 11:09 a train passed Marshalltown on the westbound track. There was no further westbound traffic until after NPBIA departed Marshalltown.

Weedman testified that since NPBIA was an hour and 5 minutes late in leaving Boone "the Dispatchers at the time, it is thought, should have foreseen the necessity to get NPBIA around...KAPRA in the very near future after NPBIA departed Boone".

Weedman testified KAPRA usually arrived Marshalltown at approximately 10:15 P.M. and normally spends thirty minutes to an hour doing its work there. He also testified NPBIA could have been put around KAPRA in 20 minutes or less.

Wagaman, the other Dispatcher testified that when she left at 11:00 P.M. she assumed KAPRA would be out by 11:15 or 11:30 and NPBIA would be delayed only 5 to 15 minutes.

Claimant maintains that when he came on duty "the die was cast" and there was "very little that I could see that I could do with NPBIA at the time."

The evidence at the investigation establishes to this Board's satisfaction that the situation had developed well before Claimant came on duty. Weedman traces the problem to a failure to foresee that NPBIA would have to be put around KAPRA at 10:10 when NPBIA left Boone. This, of course, was fifty minutes before Claimant came on duty.

Although the situation began to develop before Claimant started his tour this would not excuse his not taking action if any action was clearly available. This Board does not believe an employee can stand idly by with impunity merely because a problem is not of his own making, but we do not believe the evidence shows that this is what happened here. True, Claimant did not put NPBIA around KAPRA when NPBIA arrived Marshalltown at 11:07. Perhaps he should have as it turned out. But we cannot lose sight of the fact that the Dispatcher he relieved felt KAPRA would clear by 11:15 or 11:30 and Weedman testified KAPRA normally takes thirty minutes to one hour working in the yard. Thus it seems all available information would have led Claimant to believe KAPRA would be clearing within a few minutes after NPBIA arrived. Given the fact that 20 minutes would be consumed in putting NPBIA around KAPRA, Claimant's failure to do that does not impress this Board as obvious dereliction of duty. Of course, it didn't work out well. KAPRA didn't clear until 12:10 A.M. In retrospect Claimant's choice proved unfortunate, but it was not, we hold, a cause for discipline.

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.