

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26300
Docket Number TD-26690

Edward L. Suntrup, Referee-

(America" Train Dispatchers Association
PARTIES TO DISPUTE: (Seaboard System Railroad

STATEMENT OF CLAIM:

"It is this Organizations **position** that Mr. Skipper now be **paid** for time lost attending this investigation and for the five days suspension at rate applicable to that of trick train dispatcher and his record **cleared** of references **to** this incident."

OPINION OF BOARD: On November 29, 1983, the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with his alleged failure to **protect against** Train No. 381, **AATTA**, which departed from Moncrief on November 18, 1983, **twenty-seven** (27) minutes ahead of lineup update which had been furnished by the **Claimant** to a **Roadmaster** on that same date. After postponement **the** Investigation was held on December 12, 1983. On December 30, 1983, the Claimant **was** advised that he had been found guilty of violation of Operating Rule 754 **and** he was assessed a five (5) day actual **suspension**.

The **Rule** at bar reads, in pertinent part, as follows:

"...**trains** on time will be so indicated. and if late, the last known location and the actual or earliest departure time from that location will be given.. ."

Both the testimony at the Investigation by Roadmaster A. B. Hall, and the documentary record of the phone conversation on November 18, 1983 between the Claimant, as Dispatcher, **and Roadmaster Hall** shows that the Claimant informed the Roadmaster that Train NO. 381 **was** scheduled to leave Moncrief **Terminal** in Jacksonville at 11:30 A.M. The **Roadmaster** was informed of this by the Claimant prior to 10:28 A.M. on the morning of **November 18, 1983**. It was not until after 11:43 that the **Roadmaster was apprised** of the fact that the train in question **had, in fact, departed from Moncrief** at 11:03 A.M. on that day. There **can** be no doubt from the evidence of record that the Claimant **was remiss** in carrying out his duties. The evidence **shows** that the Claimant **was considerably cavalier** in recognizing his responsibilities in updating information to the Roadmaster when he knew that the train in question had left "...27 minutes ahead of" the original 11:30 A.M. departure time. On the basis of the evidence before it the instant Claim cannot be sustained on merits. Prior Awards from this Division have underlined that Dispatchers cannot be careless in the manner in which updates on line-ups are handled (Third Division Award 26247),

The only issue to be resolved is whether the discipline assessed by the Carrier **was** arbitrary or capricious. The Claimant is a long-term employee with the Carrier with a Dispatcher seniority date of June 23, 1956. A review of the Claimant's disciplinary record, however, shows that he had received demerits on four (4) different occasions, and one ten **(10)** day suspension, in the past for violating various Operating Rules or for failure to deliver Train Orders. **The** National Railroad Adjustment Board has **precedentially** ruled on numerous **occasions** that a Claimant's past disciplinary record can serve as **basis** for assessing the quantum of discipline (Second Division Awards 5790, 6632, 8527; Third Division Awards 21043, 22320). There is no showing here, therefore, that the Carrier did not reasonably apply the principle of progressive discipline and the Carrier's determination in this **matter** cannot be disturbed.

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 **Employee** involved in this dispute are respectively Carrier **and Employee** 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 24th day of April 1987.