NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26455
THIRD DIVISION Docket Number TD-25906

George S. Roukis, Referee

PARTIES TO DISPUTE: (America" Train Dispatchers Association
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Case No. 1 - System Docket CR-209

"Appeal from five (5) days' actual suspension assessed R. M. Clark, Train Dispatcher, requesting that the G32 Notice of Discipline be rescinded and stricken from his record.

Case No. 2 - System Docket CR-210

Appeal from three (3) days' suspension assessed R. M. Clark, Train Dispatcher, requesting that the G-32 Notice of Discipline be rescinded and stricken from his personnel record."

OPINION OF BOARD: In this dispute, Claimant was assessed two (2) separate disciplinary penalties which the Organization has consolidated into one submission for purposes of expediency and simplicity of exposition.

Carrier has voiced an objection to this approach on the grounds that the disciplinary assessments represent distinct totally unrelated issues, but we do not agree with this line of argument. Upon the record, we find no evidence or eve" inferential indications that such consolidation obfuscated the issues or prejudicially affected Carrier's position.

See Third Division Award No. 24607 for precedential authority.

As to the merits of these Claims, we will address each disciplinary assessment separately.

Under letter of January 18, 1983, Claimant was advised that a formal Investigation was scheduled for January 25, 1983, to determine his responsibility, if any, in connection with a" error of movement of Car EL 7600 on train DEM-O on Monday, January 10, 1983. Based on the investigative record Claimant was found guilty of failure to follow letter of instructions as outlined by the Chief Train Dispatcher dated December 22, 1982, and was assessed five (5) days actual suspension.

These instructions read:

"All High and Wide Trains coming to us from another Division are to be held until Conductor checks what he has in said train and compares with you where it goes and what route it goes and how high and wide car is according to the bill, and restrictions on same. "

It was the Organization's position that on January 10, 1983, a Head Brakeman had misled Claimant by identifying himself as the Conductor of Train DEM-0. It observes that accordingly Claimant gave to this individual a record of all cars showing in the consist of trains, but the individual did not report that Car EL 7600 was in the consist. Since this car was not in the consist of Train DEM-0, the Organization asserts that it was impossible for Claimant to compare the consist with the Conductor, when the Head Brakeman misrepresented himself as the Conductor.

Carrier argues that it was unequivocally incumbent upon Claimant to hold the train, since the instructions mandated that all high and wide trains coming to this locale from another division were to be held until the Conductor verified what he had in the train prior to his departure. In effect, it maintains that by his failure to hold train DEM-0, while verifying the sizes of the cars in the consist with the Conductor and comparing this with the information in his possession, he allowed a misrouted car to depart. It charges that Claimant did not question the Conductor to ascertain if the consist matched the information which he had been provided and this omission, which amounted to an erroneous assumption, was contrary to the intended application of the December 22, 1982, instructions.

In considering this case, we concur with Carrier's basic premise that Claimant was obligated to hold Train DEM-0 until the Conductor made a complete check of the train, but in fairness to Claimant, we believe that he acted properly under the circumstances then confronting him. The car numbers that Claimant transferred to the Conductor did not include Car EL 7600, since this car was to be switched out at Mansfield, Ohio. To be sure, a reciprocal obligation devolved upon the Conductor to check the Cars in Train DEM-0, but no exception was made by the Conductor or his designee. Accordingly, it was not unreasonable for Claimant to assume that the car numbers he supplied to the Conductor matched the numbers of the cars in the train. Moreover, it appeared that Claimant did not release the train until about 25 minutes after the train crew member reported that the train was ready to proceed. For these reasons, we will sustain the Claim in Case No. 1.

As to the second case, the Claimant was assessed three (3) days deferred suspension for his asserted failure to instruct crew on CODI-7 on Sunday, February 27, 1983, to spot MP 711350 at Monsanto Chemical, New Lexington, Ohio. In defense of its petition, the Organization argues that Claimant was not aware that Car MP 711350 was in the CODI-7, since it did not appear in the train consist information provided by the Assistant Chief Dispatcher. It

asserts that the Conductor of CODI-7 did not contact Claimant as provided by Division Notice 2-l-83 and notes that the train consist reported to the Assistant Chief Train Dispatcher by the Buckeye Yard Office did not indicate a New Lexington set off. Claimant testified at the March 8, 1983, Investigation that while the car in question appeared on the previous day's night letter (February 26, 1983) and the morning letter of the same date, it did not appear in the train consist information provided to him by the Assistant Chief Dispatcher.

Carrier contends that the existence of the Monsanto car cannot be questioned and importantly, the letters of February 26 and 27, 1983, clearly showed that the car was part of the train consist. As such, it argues that since Claimant had in his possession two official documents which established the existence of MP 711350, it was obligatory upon him to exercise a minimal amount of caution to determine the basis for the apparent discrepancy. It argues that Claimant was remiss for not attempting to resolve the inconsistency between the letters and the train consist information.

In considering this case we agree with Carrier's position that Claimant did not exercise the minimal amount of precaution that inhered in his position. Specifically, we find that once he was apprised by both the night and day letters that MP 711350 was present in the train, then not included in the train consist information, he should have routinely made a check to determine if a discrepancy existed. By not doing so and assuming that the train consist information was accurate, we believe that Claimant failed to manifest the degree of diligence expected of him. Contrary to the Organization's position that the night and day letters were essentially innocuous, we find that at minimum he should have tried to reconcile the informational differences. For these reasons, we must deny the Claim.

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

The Agreement was violated with respect to Case No. 1.

The Agreement was not violated with respect to Case No. 2.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of August 1987.