

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number 26520**
Docket Number TD-26697

Edward L. **Suntrup**, Referee

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

STATEMENT OF CLAIM:

"It is the position of this Organization that Mr. **Oelslager** now have his record cleared of these [15] demerits and all mention of this incident and investigation removed from his record."

OPINION OF BOARD: The Claimant is accused of having violated various **Operating Rules** of the Carrier when he failed to issue Train Order No. 1078 to the Moncrief Operator while working the **3:59-11:59** P.M. shift on November 10, 1983.

The Investigation into this matter was held at Tampa, Florida on December 12, 1983, after which the Claimant was informed that he had been found guilty as charged. He was assessed fifteen (15) demerits on his record.

The Claimant was found guilty of violating the following Operating Rules of the Carrier.

"Rule 204

Train orders must be addressed to those who are to execute them, naming the place at which each is to receive his copy. Those for a train must be addressed to the conductor and enginemen, and also to anyone who acts as its pilot. A copy for each employee addressed and a copy for the flagman on passenger trains must be supplied by the operator.

Rule 786

They will issue orders governing the movement of trains in the name of the superintendent and see that they are transmitted and recorded according to **prescribed** forms and rules and will keep a record **of** the movement of trains, on train sheet, noting thereon important incidents occurring during their tour of **duty**. They must supervise the movement of trains, anticipate the need for train orders and have them **ready when** needed.

Rule 787

They will promptly take action to afford protection against any unknown condition which may affect the safe operation of trains and engines.

Rule 790

Before being relieved, a train dispatcher must write in ink in the train order book a transfer of all orders not fully executed, listing them by numbers, all clearance cards issued to trains which have not departed, and all lineups in effect. He must know that the relieving train dispatcher fully understands all features pertaining thereto. The relieving train dispatcher **must** fully acquaint himself with all such matters, and the positions of trains, before undertaking his duties. Each must sign the transfer in the presence of the other."

The Claimant is a regularly assigned Train Dispatcher with a seniority date of September 9, 1960. Taft, Florida is located between Tampa and Sanford, Florida on the **Lakeland** Subdivision and is the originating and terminating point for trains known as Orange Blossom Specials. These trains carry perishable freight and have the numbers 171 and 172. These trains are **seasonal**. According to testimony given by the Chief Dispatcher at the Investigation clearance cards with appropriate orders to be issued by the Tampa Train Dispatchers are required for these trains at the initial clearance points for the Southbound train at Moncrief, and for the northbound train at Orlando. The Chief Dispatcher stated that, he issued instructions to this effect in 1982 and again in October of 1983. The trains in question were discontinued in the spring of 1982, after the first instructions were issued, and then started again in the fall of 1983. The central issue of this case is whether the Claimant ever received instructions by the Chief Dispatcher in October of 1983 for the Orange Blossom Special after this train was started again.

According to testimony at the Investigation by the Claimant the original instructions issued in late 1982 had been thrown out "... because the (Orange Blossom Special) had been abolished" at the end of June of 1983, and no new instructions had been received. The Claimant further testified that no one in **the Tampa** Dispatching office was familiar with the alleged instructions in question. Two Assistant Chief Dispatchers testified to the same effect as will be noted below. A study of the record shows that the Chief Dispatcher could not produce a copy of the instructions in question although his testimony was that they had been issued. An additional contention by the Chief Dispatcher-at the **Investigation** was that, in either case, the Claimant was familiar with issuing such orders **to the** southbound Orange Blossom Special **because** he had done so earlier in the same month of November of 1983. The record shows, however, that these orders were not for southbound, but rather for northbound trains.

Assistant Chief Dispatcher R. R. Cribb testified as follows at the Investigation relative to the alleged instructions having been issued in the fall (October) of 1983.

Q (by Organization Representatives)
. . . do you know of any instructions to the train dispatchers at Tampa pertaining to the clearing of the Orange Blossom Special at Moncrief Yard or at Orlando on the northbound trip? . . .

A (by Assistant Chief Dispatcher Cribb)
When the Orange Blossom Special was first established they put **out** instructions that the train would be cleared at Orlando to go through Sanford and at Moncrief to go through Sanford. Then the whole assignment was abolished, the time table was changed and to my knowledge there has been no new instructions issued about handling of trains through the terminal.

Q Do you recall seeing any instructions from the Chief Dispatcher between October 1 **and** October 17th of 1983, pertaining **to** the clearance of these trains?

A **No**, I don't.

* * * *

Q (Then) . . . you don't recall having seen any (instructions) issued since October 1 of this year pertaining to the . . . (the Orange Blossom Special)?

A Not since the (train's) . . . been **reestablished**."

At the Investigation Assistant Chief Train Dispatcher J. S. Weaver also testified to the **same** effect. This witness testified that although the Chief Dispatcher stated that the new instructions for the fall of 1983 had been issued to ". . . Assistant Chief Dispatcher," he had not received a copy of them. Additional witnesses who testified that they were not aware of the **reissuance of instructions** for the Orange Blossom Special in the fall of 1983 were Assistant Chief Dispatcher L. E. Perry and Extra Train Dispatcher W. E. Jones.

There is **some** question in the record with respect to whether the original **orders issued** in 1982 were still in effect since the train had been

abolished and then reinaugurated again. The Hearing Officer implied that since the instructions were never officially canceled they still held. Such may have been technically true but it apparently was contrary to past practice as a number of witnesses testified. For example, Assistant Chief Train Dispatcher Weaver testified that the original instructions issued in 1982 would have been ". . . throw" out" when the ". . . train no longer existed" after the Spring of 1983 because there would have been no further ". . . need for the instruction.- The Claimant also testified to this past practice for trains which ceased operation. Undoubtedly this was also the Chief Dispatcher's understanding of past practice since it was his claim that the instructions had been reissued.

After close study of the record as a whole the conclusion is warranted that the Carrier has failed to meet its burden of proof as it must in discipline cases (Second Division Awards 5526, 6054; Third Division Awards 17347, 20766; Fourth Division Awards 3379, 3482). The Claim is sustained.

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

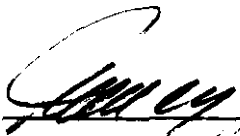
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary



Dated at Chicago, Illinois, this 9th day of September 1987.