

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27767  
Docket No. TD-27072  
89-3-86-3-259

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"This is in reference to Mr. A. M. Henson's letter of September 10, 1985, file 011-22 assessing 6 days suspension to Train Dispatcher A. Castillo as a result of a hearing held in San Antonio September 6th and 7th 1985.

. . .

This is to request that Mr. Castillo's record be cleared and that he be compensated for all time lost...."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On September 3, 1985, the Claimant was charged as follows:

"You are charged with responsibility for allegedly being indifferent to duty or to the performance of duty; and, for alleged failure to render every assistance in your power in carrying out instructions, when you issued clearance for Extra 8260 West, 01 MBSMF 01, at Sanderson, at approximately 8:29 PM, September 2, 1985, authorizing 01 MBSMF 01 to operate at maximum speed of 55 MPH, which resulted in excessive delay to 01 MBSMF 01 between Sanderson and El Paso, which may be in violation of Rule 802, that portion reading:

'Indifference to duty, or to the performance of duty, will not be condoned.'

and, Rule 3, that portion reading:

'Employees must render every assistance in their power in carrying out the rules and instructions ...'

of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company, while you were employed as Train Dispatcher, Sanderson to El Paso District.

Formal hearing will be held in the Superintendent's Office, 1174 East Commerce Street, San Antonio, Texas, at 9:00 AM, Friday, September 6, 1985."

Subsequent to the Investigation, the Claimant was assessed the discipline which is now on appeal before the Board.

There is no dispute: (1) that the instructions for the train in question to be subject to a 55 MPH limit for fuel conservation expired at 11:59 PM, September 1, 1985, and (2) that when the Claimant cleared the train at 8:29 PM, September 2, he mistakenly believed the speed restriction was still in effect, rather than the normal 70 M.P.H. speed authorized this train.

It is disputed whether this caused any delay to the train. The Organization argues there was no delay and that given other conditions the train could not have made any faster time. Based on this, it argues in effect, "no harm-no foul."

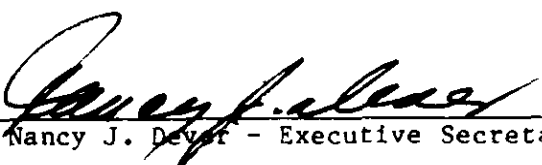
Assuming, for the sake of argument, that it is correct about the question of delay, these circumstances still give rise to legitimate concerns on the part of the Carrier. A mistake is a mistake. The fact that an error in one instance was inconsequential does not mean the Carrier cannot engage in reasonable disciplinary efforts to assure mistakes, which under slightly different circumstances might have serious consequences, do not occur in the future.

The real question here is whether a six day suspension is a reasonable penalty. A major consideration in this regard is the Claimant's past record. If it were not for the fact he was dismissed in 1982 and received a five day suspension in 1983, the Board would tend to agree a suspension of six days was excessive under the circumstances. However, in view of his past transgressions, a six day suspension, while on the extreme edge of a reasonable range of penalties, is not excessive. Accordingly, the Claim will be denied.

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 2nd day of March 1989.