

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"I request that Mr. L. C. Geissman be returned immediately to service as Train Dispatcher in Brewster, Ohio and that he be compensated at dispatchers rate for all time lost from November 15, 1986 until he is reinstated...."

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 were given due notice of hearing thereon.

As of November, 1986, Claimant had been an employee of Carrier for some 33 years, 19 of those as a Train Dispatcher. On November 14, 1986, he was telephoned at home after duty hours and suspended from service pending investigation into an incident which had occurred earlier during his shift that day. Following the hearing and investigation, Carrier dismissed Claimant from service.

It is not disputed that while on duty on November 14, 1986, Claimant issued track occupancy authority to a Maintenance Department employee to operate a brush cutter between MP 37 and the east end of Green Creek siding, until 10:00 A.M. He had applied appropriate electronic blocking to protect the brush cutter. But at approximately 9:28 A.M., when another on-track vehicle reported clear of the main track, Claimant removed not only its blocking devices but also those protecting the brush cutter, leaving the latter unprotected for about 32 minutes.

At the investigation held on November 25, 1986, the facts underlying the incident were developed through the following questions and answers by the Chief Train Dispatcher and Claimant:

- "81. Q. In your preliminary of this investigation of this matter that you evidently have made, is there anything that you could offer as an explanation as to why the incident occurred?
- A. Well from looking at this exhibit A, when we was talking about, the only way that I can see that Mr. Geissman possibly could have removed the blocks was when he cleared up Mr. Hartley between the east end of Clyde and the East End of Green Creek and taken the blocks down at the same time between the switches at Green Creek on his controls. You know on the control stand, you've got assigned control station, 3 digit numbers and I believe Green Creek is 135, if you would call up 135 station and unblock Exit 2 east and west, you'd remove the ones at Clyde and also the ones between the switches.
82. Q. By inadvertently [sic] maneuvering [sic] those two blocking devices?
- A. Yeah, just using the...on our board we don't have the little blocking devices.
83. Q. It's electronically blocked?
- A. Right."
- "132. Q. Mr. Geissman, did you remove any portion of Mr. Minadeo's protective blocking prior to his reporting in the clear?
- A. Apparently I did remove the block between the west and east end of Green Creek when I removed Mr. Hartley's blocks at the east end of Clyde to the east end of Green Creek. That's the only explanation [sic] I have for the removal of that block."

At the conclusion of the investigation, Carrier found Claimant guilty of "...failure to provide proper blocking for brush cutter ... and also your failure to report this incident on the train sheet, ..." (emphasis added). Carrier dismissed the Claimant from service effective December 5, 1986, and the Organization perfected the present claim seeking his reinstatement and backpay. Attempts to resolve the claim were not successful, but the Carrier, on its own initiative issued a letter dated March 19, 1987, restoring Claimant to service without pay for time lost and without prejudice to the position of either party. Claimant returned to duty March 31, 1987. The claim before the Board seeks pay for time lost during the period of November 15, 1986 - March 30, 1987.

There is no question that Claimant made a serious error by inadvertently removing the blocking protection from the brush cutter. Happily, no one was injured but this mistake might have had disastrous consequences. Claimant cannot be absolved from all responsibility for his mistake.

It is difficult, however, to justify Carrier's finding Claimant guilty of the separate offense, and presumably increasing the quantum of discipline, for "failure to report the incident on the train sheet." Nothing in this record supports a conclusion that Claimant was aware of his error, failed knowingly or willfully to correct it, or tried to cover it up. When confronted with the facts he freely admitted making a mistake, apparently the first cause for discipline in his 33 years of service to this Carrier.

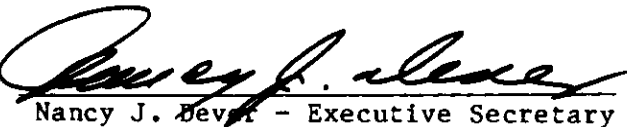
In the circumstances, we find the discipline excessive. We shall reduce the penalty and direct Carrier to compensate Claimant for time lost from February 15, 1987 forward to date of reinstatement to service. See Third Division Awards 23842, 26514, and 27136.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.