

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28830
Docket No. TD-28740
91-3-89-3-123

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM:

APPEAL #1 - CARRIER FILE TD-FTW-88-2

Appeal of thirty (30) days deferred suspension assessed Train Dispatcher P. F. Hipsher, Ft. Wayne, Ind., May 24, 1988

APPEAL #2 - CARRIER FILE TD-FTW-88-3

Appeal of thirty (30) days actual suspension assessed Train Dispatcher P. F. Hipsher, Ft. Wayne, Ind., May 24, 1988

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

In this case two separate disciplinary grievances were joined into one docket submission, but, distinguishable circumstances underlying each grievance. Separate investigations were held on each asserted incident.

In the first incident, Claimant was found guilty of delaying Train No. 181 for approximately twenty (20) minutes at the Mardenis Passing Siding, Huntington, Indiana, on April 22, 1988, notwithstanding being given clear instructions that said train was not to be delayed. Claimant does not dispute per se the investigative findings, but maintains that he issued said instructions to his subordinate, The Trick Dispatcher, who was directly responsible for arranging the passing of rail traffic. The assessment of a thirty (30) day deferred suspension activated a previously imposed twenty (20) day deferred suspension.

In the second incident, Claimant was found guilty of failing to call the outbound crew of Train No. 181 on May 10, 1988 prior to its arrival at Peru, Indiana. This location is a crew change point for Train No. 181. On this night, Claimant was working the position of Third Trick Train Dispatcher at Ft. Wayne, Indiana, and was required to call said crew one and one-half hours in advance of the time it was actually needed. This would avoid delaying the outbound train. He was assessed an actual thirty (30) days suspension, which activated the thirty (30) day deferred suspension assessed for delaying the same train on April 22, 1988. In toto, he was actually suspended eighty (80) days. This included the activation of the previous twenty (20) day deferred suspension.

In defense of its petition, the Organization argues that Carrier prejudged his guilt as evidenced by its failure to charge or require other involved employees to give testimony at the investigation. The Organization also contends that the discipline assessed was punitive and not corrective.

In response, Carrier argues that the investigative findings clearly established Claimant's guilt in said incidents and accordingly, given his past disciplinary record, the suspensions imposed were consistent with the normative precepts of progressive discipline and the serious nature of the charged offense.

In considering this case, the Board finds Carrier had ample justification for assessing discipline, since the record evidence, particularly the investigative transcripts, shows unmistakably that Claimant was responsible for delaying Train No. 181 on April 22, 1988, and also responsible for delaying the calling of the outbound crew on May 10, 1988. On the other hand, we cannot conclude that Claimant was totally responsible in an absolute sense for the April 22, 1988, and, as such, we will modify the assessed thirty (30) day deferred suspension to fifteen (15) days. He is to be made whole for the difference in time. The subsequent thirty (30) day actual suspension was based upon justified grounds and not excessive, when the nature of the offense is considered and his past disciplinary record is factored into the assessment calculus.

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 25th day of June 1991.