

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30415
Docket No. TD-31013
94-3-93-3-2

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is an appeal of the discipline imposed on train dispatcher E. L. Cyphers as a result of a hearing held on October 7, 1991.

We request at this time all indications of this incident be removed from Mr. Cyphers record and he be compensated for all lost time . . ."

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 employee 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.

Claimant was working on the third shift as Michigan Train Dispatcher. He was an employee with twenty-five years of service, two years of which was as a Train Dispatcher. The territory under his jurisdiction and control included, among other areas, Wayne Junction, Michigan, a point at which the CSX railroad intersects with Conrail.

During the tour of duty which began at 11:00 P.M. September 27, 1991, and was scheduled to conclude at 7:00 A.M. September 28, 1991, a derailment of a Conrail train occurred at approximately 1:00 A.M. September 28 at Wayne Junction caused by a CSX train being pushed beyond the CSX track limits out to foul the main line track of Conrail. As a result of the derailment, Claimant was withheld from service and instructed by notice dated September 30, 1991, to appear on October 7, 1991, for a Hearing in connection with his alleged failure to properly notify the Conrail train of the track obstruction. The Hearing was conducted as scheduled at which time Claimant was present, represented and testified on his own behalf. Following completion of the Hearing, Claimant was informed by notice dated October 16, 1991, that he had been found at fault on the charge and was assessed discipline by a 30 day suspension. It is indicated in the case record that Claimant "was actually suspended from service for nineteen days, while the other eleven days were deferred for a six month period."

The Organization in its progression of this dispute argued that Carrier has not met the burden of proof requirement to support the imposition of discipline. It argues that the Claimant acted on the information given to him by the CSX employee and that information made no reference to the east/west Conrail main line tracks. It contends that Claimant acted properly when he put a blocking device on the CSX north track on the basis of the information received by him. The Organization cites with favor several Third Division Awards which deal with situations in which a Train Dispatcher acted upon information furnished him by others and in which the Board held the Train Dispatcher blameless when relying on such information furnished by others. The Organization additionally argued that Claimant had not been afforded the opportunity to take a physical layout road review trip over the territory here in question and, therefore, Carrier must accept some of the responsibility in this incident.

In answer to the question:

"Are you qualified on the physical characteristics of the territory involved during your tour of duty on September 28, 1991?"

Claimant answered:

"As far as I know I am."

Carrier argues that the Claimant readily acknowledged at the Hearing that he was in fact qualified on the physical characteristics of the territory involved and cannot now hide behind the contention that he had not made an on-ground review of the physical layout of the tracks in question. Carrier insists that Claimant did, in fact, receive sufficient information from the CSX employee to permit him to determine that the CSX train was afoul of the Conrail main line. It points with favor to the CSX employee's advice to Claimant that "they pushed through the end of No. 18 track" as indicative of the fact that the CSX car(s) were interfering with movement on the east/west Conrail main line track No. 1. Carrier contends that regardless of the CSX employee's reference to north and south, it was Claimant's responsibility as the "in charge" employee to make appropriate inquiries to make certain that the Conrail main lines were or were not involved in the situation. This, Carrier says, Claimant did not do even though he had the time to do so before the arrival and collision of the Conrail train.

From our review of the Hearing transcript and after making a study of the precedential citations offered by both sides, we are convinced that there is evidence in this case for assignment of blame to all.

It is without question that a responsible Train Dispatcher must first be qualified and familiar with the territory over which he/she is exercising jurisdiction and control. It is true that Claimant readily acknowledged at the Hearing that he was qualified on the physical characteristics of the territory involved. It is also true that prior to this incident, Claimant had not made a physical layout road review trip over the territory involved. This situation existed in spite of the fact that Carrier's Operating Rules expert candidly testified at the Hearing that, "It is also company policy that each Train Dispatcher will be allowed to have road days once a year." If Carrier had complied with its policy with this Claimant, perhaps the incident here involved would have been averted. The Board cannot, however, decide this case on this single aspect of the total situation.

Regardless of the Organization's contention that Carrier and the CSX employee were responsible in this situation rather than Claimant, we cannot ignore the fact that Claimant was the employee in charge of both the area and the situation. Claimant was responsible for what occurred on Conrail. Because he had never seen the on-ground track layout, he had an added obligation to ask those questions of the CSX employee which were necessary to be sure that he fully understood what was being reported to him. The reference by the CSX employee to "your line" should have had more than one meaning to Claimant. Was it "your (Conrail) line" or "your (CSX controlled) line"? The references to north and south main lines should have triggered questions from Claimant. Was the CSX employee referring to the north (geographic location) main line or to the north (directional CSX) main line. To be sure, the Conrail main lines operate east to west, but they are physically located with No. 1 main north of No. 2 main. Of course, hindsight is always 20/20, but adequate foresight is a quality which must be exercised by the in charge Train Dispatcher. He cannot assume that a reference to main line north has only one meaning in a situation in which another meaning is possible. He cannot jump to conclusions especially when his knowledge of a situation is limited to timetables and track charts.

While we find no particular fault with the cited Awards which deal with a Train Dispatcher's right to depend on information received from others, we do not find in this particular fact situation that Claimant adequately examined the information furnished to him by the CSX employee before he acted as he did and failed to act to prevent the derailment which subsequently occurred.

It is the conclusion of the Board that Claimant's responsibility in this case has been established by substantial evidence. The quantum of discipline assessed was not arbitrary or excessive. The Carrier's dereliction in not permitting the Train Dispatcher to have the benefit of physical layout road review is reprehensible, but does not totally mitigate Claimant's own responsibility to know the situation before acting on assumptions. Therefore, the claim for removal of all discipline is denied.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.