

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31185
Docket No. TD-31614
95-3-93-3-625

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: ((American Train Dispatchers Department/
(Brotherhood of Locomotive Engineers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"This is to appeal decision by Terminal Superintendent J. E. Doughman to assess a thirty (30) day non-compensated suspension to Ms. P. K. Stover, a dispatcher in the Galesburg, IL. dispatching office, ostensibly as a result of an investigation Ms. Stover was required to attend on May 5, 1992 in Lacrosse, WI. to ascertain the facts and determine Ms. Stover's responsibility, if any, in connection with train 01-012-18 striking a bridge on March 21, 1992 in Cicero, IL."

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.

The Claimant was employed as a Train Dispatcher at Galesburg, Illinois, assigned to the First Subdivision, which governs the movement of trains between Chicago and Aurora, Illinois. The Claimant's duties included switching trains in and out of the Ceco Intermodal Ramp Facility ("Ceco") at Cicero, Illinois.

On March 21, 1992, Train No. 01-012-18 (No. 12) left Eola heading for its ultimate destination of House 7 Track. On the way, the train had to drop several cars into the Ceco Intermodal Ramp

Facility. They then were to take the remaining four cars to House 7 Track. The train was held up temporarily while a switching crew exited the ramp in front of them. After the switching crew cleared, the Engineer asked the Dispatcher to set the signals so they could proceed. The Dispatcher set the signals and No. 12 proceeded to go through the Main Switch onto Main Track No. 1. This track, like others, ran under the Belt Railway of Chicago bridge. However, this particular track had not been lowered and the clearance at the bridge was under 18'. Because the consist of Train No. 12 had four double stack cars, which were over 19' in height, it did not clear the bridge. Consequently, when the train hit the bridge, the first eight containers were peeled off the upper levels of the first two cars and the ninth container on the second car was sheared approximately half way into the container and pinned under the bridge. As a result of this accident, the Engineer, the Conductor and the Dispatcher were charged with rule violations and suspended for 30 calendar days without pay.

The Organization argues that the Carrier has failed to meet its burden of proof. They suggest the Carrier relied upon the testimony of the Engineer who had a vested interest in the outcome of the investigation. Furthermore, they do not believe that the transcript of the radio communication which occurred on the day of the accident substantiates the testimony of the Engineer. They contend the Dispatcher had no way of knowing the train consisted of four double stack cars. They point out she was 300 miles from the site and had to rely totally on what she was told by the traincrew, the Yardmaster and the East End Tower Operator. In this regard, they claim there is no evidence the Claimant was ever advised that the consist contained four double stacked cars.

The Carrier claims both the Engineer and the Yardmaster advised the Claimant about the double stack cars. They also point out that Train No. 12 always carries double stack cars and the Claimant should have been aware of the fact. Furthermore, they believe it was the Claimant's responsibility to actively determine what kind of cars were involved before she switched the train out of the Ceco Ramp. Her failure to ascertain the kind of cars involved was a dereliction of duty. The Carrier points out that the Engineer, the Conductor and the Claimant were suspended for 30 calendar days.

The Board has reviewed the record in this matter carefully. Despite a very cogent argument by the Organization, we find the Claimant was at least in part responsible for the accident. We would agree with the Organization that the Engineer had a vested interest in claiming he advised the Claimant about the four double stack cars. If his was the only evidence against the Claimant, the

Carrier might have been remiss in concluding the Claimant was guilty. However, in addition to the testimony of the Engineer, the Yardmaster also testified he had informed the Claimant about the double stack cars when the train left Eola. Besides his testimony, there is the fact that Train No. 12 almost always carries double stack cars. In view of those two things, the Claimant at least had the responsibility of assuring what cars the train carried before she switched in onto Main Track No. 1.

In view of the Claimant's previous record and the seriousness of the accident, the Board believes the 30 calendar day suspension was reasonable.

AWARD

Claim denied.

ORDER

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 26th day of September 1995.