

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31543  
Docket No. TD-31834  
96-3-94-3-252**

The Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

**PARTIES TO DISPUTE:** (American Train Dispatchers Association, Department of  
( the Brotherhood of Locomotive Engineers  
(  
(Kansas City Southern Railway.

**STATEMENT OF CLAIM:**

*" Claim on behalf of Train Dispatcher W. R. Wilkinson to lift suspension of 30 days assessed Claimant and to remove any reference to such suspension from his record and compensate him for any and all time lost plus any expense incurred as a result."*

**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.

This is a disciplinary dispute involving a Train Dispatcher who is charged with causing the derailment of Train No. 55 at 6:00 P.M. on April 6, 1989. The Claimant is also charged with causing damage to the north switch at Lassater, at both the main line and the siding. Both the derailment and damage to the switch and siding are allegedly due to the Claimant's failure to require his crew to properly examine the switches and to see that they were correctly lined and locked for the route as prescribed by Rule 104 (b).

It is the contention of the Carrier that this is a stale claim and should be dismissed due to laches. The Carrier further contends that the Organization's objection to the fairness of the process should have been raised prior to or at the Hearing. By not raising the objection at the Hearing, the Organization waived this defense.

On the other hand, it is the position of the Organization that the Claimant did not receive a fair and impartial Hearing as there was no Investigation. Thus, the Organization argues, that the discipline imposed is improper. Moreover, the Organization asserts, that the defense of laches itself is insufficient as the Carrier was not disadvantaged by the delay.

The Board finds the Carrier has not met his burden of proof by a preponderance of evidence as required. The Board concludes that timeliness alone is not an adequate defense unless there is an additional showing of some prejudice to the Carrier such as loss of evidence, etc. Therefore, the Board finds that since the Carrier was not prejudiced by this delay, this claim must be sustained.

### **AWARD**

Claim sustained.

### **ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 25th day of July 1995.**