

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32443
Docket No. TD-32982
98-3-96-3-367

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

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Pursuant to Rule 19(c), this is to appeal the August 2, 1995 discipline decision of Hearing Officer, M. J. O’Connell and the subsequent sustaining of this decision by W. R. Ernst, Deputy General Manager. Whereas, the Carrier assessed the disciplined of ‘fifteen (15) days suspension to be held in abeyance’ upon Train Dispatcher N. Lengares.”

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 were given due notice of hearing thereon.

Claimant, a Train Dispatcher in Carrier’s Office in New York City, was notified by letter dated April 25, 1995 to attend an Investigation on charges of violation of four specified Operating Rules. The charges state that Claimant was employed on April 17, 1995 as the Section “B” Train Dispatcher in Carrier’s Centralized Electrification and

Traffic Control Facility, on the 2300-0700 shift, that he received a Plate Order request at 2028 hours, which request went into effect as Plate Order 1301 at 0042 hours. They continue that Claimant and Train Dispatcher Trainee D. Nash failed to ensure that blocking devices were properly applied for the safety of Electric Traction Department maintenance personnel. The Plate Order was used to show that all AC and DC power was removed from the overhead catenary wires and that protective blocking devices listed in the Order were applied to prevent entry into the designated area by trains using such power.

According to the charges, a New Jersey Transit AC electric train was able to traverse the unprotected route through two interlocking switches in reverse position at approximately 0238 hours on April 18, 1995. Carrier contends that the traverse energized the catenary and thereby jeopardized the safety of Electric Traction Department personnel who were working around the area. According to Carrier, this "extremely dangerous situation" would not have occurred had Claimant secured the proper blocking devices.

An Investigation was held on July 28, 1995. On August 2, 1995, Claimant was advised that the charges were sustained and was assessed discipline of a 15-day suspension to be held in abeyance. Carrier states that the suspension was not served by Claimant.

The Organization maintains that the discipline was excessive and disparate in that Train Dispatcher E. Gassenheimer, who received the request on the 1500-2300 shift shared responsibility for the incident, but received only a written counseling. The evidence shows that the Train Dispatcher went off duty at 2300 hours and that the request for the Plate Order was turned over to Claimant, the Train Dispatcher relieving him, and to his Trainee. Carrier maintains that Claimant was responsible to see that his Trainee properly applied the protective blocking devices.

Carrier avers that the Statement of Claim is vague, fails to state any basis for the appeal or remedy sought, and varies from the appeal handled on the property.

We find that the Statement of Claim does adequately state an appeal from Carrier's assessment of the discipline at issue. By necessary implication, it seeks that the 15-day overhead suspension be rescinded or modified.

The Board carefully reviewed the lengthy record presented in this case. We note that 12,000 volts were involved with the AC catenary and that while no injury or adverse consequence occurred, the potential for such a result clearly existed. Carrier was not required to wait until a more serious result ensued before taking appropriate disciplinary action.

The record shows that the misconduct charged to Claimant did in fact occur. The Board carefully evaluated the Organization's claim of disparate treatment. We find, however, that Claimant was primarily at fault in that he was responsible for the dispatch operation at the time and place where the incident occurred. The outgoing Train Dispatcher, Mr. Gassenheimer, who received a letter of caution or counseling, was not similarly responsible. Gassenheimer received and logged the initial request for the Plate Order and entered incorrect blocking device information on Carrier's NEC-399 form.

Therefore, because a claim of disparate treatment must rest upon a showing of unfounded, unfair or discriminatory treatment of individuals who are similarly situated, and because Claimant and the preceding Train Dispatcher were not similarly situated, the Organization's claim of disparate treatment cannot be sustained.

Neither does our review of the record substantiate the Organization's claim that the discipline imposed was excessive. In view of the potential safety hazards involved, we find that the discipline was appropriate and not an action which warrants intervention by the Board. Because there is substantial evidence in the record to support Carrier's charges against Claimant and the discipline imposed was appropriate, Carrier's disciplinary action is upheld.

We find no violation of the Agreement between the Carrier and the Organization, and no Rule violation in the Carrier's determination of responsibility and assessment of discipline. See, as pertinent, Third Division Award 29590.

AWARD

Claim denied.

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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 21st day of January 1998.