

Award No. 11555
Docket No. TD-13764

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The New York, New Haven and Hartford Railroad Company (hereinafter referred to as "the Carrier") violated the existing schedule agreement between the parties, specifically Article 6 thereof, by its arbitrary, capricious and discriminatory action not supported by evidence of record in withholding Train Dispatcher J. J. Smith, Sr., from Carrier's service for a period of thirty (30) days upon a charge of allegedly violating Carrier's Operating Rule 762.

(b) The Carrier shall now be required to compensate Claimant Smith for the said thirty (30) days and clear his record of the unsupported charge.

OPINION OF BOARD: The Claimant in this case was given a 30 day suspension for his part in a train wreck. The Claimant was specifically charged with a violation of Rule 762. This rule provides:

"They should bear in mind that many matters clear to them may not be fully understood by operators, conductors, enginemen and others, and give instructions in such a manner that they will not be misunderstood. Being perhaps more familiar with existing conditions than some others, it is the dispatchers' duty to take the initiative so far as lies within their power; see that trains are moved safely, anticipating dangerous conditions, and avoid issuing messages or unsafe combinations of train orders that might cause an accident, due to confusion or misunderstanding."

A reading of the record as a whole shows that several of the Carrier's employes were culpably negligent and that any one of several of them could have avoided this accident if they had been attentive. The record also shows that the individual Claimant must assume his share of responsibility in that he "assumed" matters which as a matter of common diligence he had no right to under Rule 762. The Carrier was therefore not arbitrary and capricious in disciplining him.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.