



Award No. 16610
Docket No. TD-17263

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines), Respondent

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

(a) The Spokane, Portland and Seattle Railway Company (hereinafter referred to as "the Carrier"), violated the existing schedule Agreement between the parties, Article 20 thereof in particular, by its action in assessing discipline on the record of Train Dispatchers W. E. LaMon and L. R. Harvey, following formal investigation held on June 16, 1967 for alleged rules violations, which investigation failed to establish the alleged violations.

(b) The Carrier shall now be required to clear the employment records of Claimants W. E. LaMon and L. R. Harvey of the charges which provided basis for its action.

OPINION OF BOARD: This is a discipline case in which the Petitioner is seeking the removal of ten days record suspension from the personal record of Train Dispatcher W. E. LaMon and letter of reprimand from the personal record of Train Dispatcher L. R. Harvey.

On June 13, 1967, the Claimants were directed to appear for a formal investigation on June 16, 1967:

" * * * to determine facts and place responsibility in connection with your failure to comply with instructions from the proper authority as contained in the Dispatchers Manual in that Extra GN 704 East was permitted to leave Vancouver ahead of time indicated on Line-Up Order No. 66 dated June 12, 1967, without proper order instructions."

Investigation was conducted on the date indicated, a transcript of which has been submitted by each party. Following the investigation the Claimants were notified of the discipline assessed. The only witnesses at the investigation conducted on June 16, 1967, were the Claimants.

While the amount of discipline imposed was minimal, we agree with the Petitioner that any discipline imposed must be based on the offense with which charged, and supported by the evidence adduced at the investigation. A careful review of the transcript of the investigation leads us to the conclusion that the Carrier did not prove the Claimants guilty of the offense with which charged. Claimant LaMon stated that he issued Line-Up Order No. 66 showing Extra GN 704 East leaving Vancouver at 3:25 P.M., and that this figure was based on information received by him from the Yardmaster and the Chief Dispatcher, and at no time was he made aware of the possibility that the train might depart ahead of the time shown on the line-up. Claimant LaMon was relieved by Claimant Harvey at 2:49 P.M. Claimant Harvey testified that shortly thereafter, at 2:56 P.M., he contacted the Yardmaster, checking on the departure figure on Extra GN 704 East, and was informed that the train had departed at about 2:50 P.M.

Based on the record, we are of the opinion that the Carrier failed to prove a dereliction of duty on the part of the Claimants for the offenses with which charged. We will, therefore, sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.