



Award Number 17347

Docket Number TD-17947

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
SPOKANE, PORTLAND AND SEATTLE RAILWAY
COMPANY (System Lines)**

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 in the form of ten (10) days' actual suspension from service upon Train Dispatcher H. C. Sweeney following formal investigation held on March 7, 1968 for alleged rules violations, the record of which does not prove the charge.
- (b) The Carrier shall now be required to compensate Claimant for the wage loss sustained and to clear his employment record of the charges which provided the basis for Carrier's action.

OPINION OF BOARD: This is a disciplinary case where Claimant was suspended for ten (10) days after an investigation from which Carrier found Claimant in violation of Rules 702 and 990 of the Consolidated Code of Operating Rules. (Although Carrier's letter of notice of the investigation mentioned a possible violation of "instructions from proper authority as contained in Dispatcher's Manual," and Carrier's brief cites the provision thereof which it alleges Claimant violated, the fact remains that the official notice of finding sent to Claimant suspended him exclusively from violation of Rules 702 and 990 of the Consolidated Code of Operating Rules.")

Consequently, only Rules 702 and 990 are properly before this Board for interpretation and ascertainment of any possible violation, and they are set forth below:

"CONSOLIDATED CODE OF OPERATING RULES

RULE 702

"Employes must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

RULE 990

"Train dispatchers will issue train orders and must transmit and record them as prescribed by the rules. They must make the various records required and must comply with special instructions, including 'Train Dispatchers Manual', where provided."

After a careful review of the transcript, this Board finds that Carrier has not sustained its burden of proof that the instant Claimant violated the above cited rules. A record must establish by substantial and competent evidence of probative value that the accused has violated some rule or instruction. (Among many others, see Awards 10692, 6827, 6116, 6056, and 5881.) This, Carrier has failed to do in the instant case.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1969.