

Award No. 18430
Docket No. TD-18749

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(a) The Chicago and North Western Railway Company (Chicago Great Western), (hereinafter "the Carrier"), violated the effective Schedule Agreement, Article 8 thereof in particular, by imposing its arbitrary, unwarranted and harsh disciplinary action of assessing Train Dispatcher W. W. Gardner (hereinafter "the Claimant") thirty (30) day suspension as a result of a hearing held January 6, 1970.

(b) Carrier shall now be required to rescind the action referred to in paragraph (a), clear the Claimant's record with respect thereto and compensate him for all time lost.

OPINION OF BOARD: On December 31, 1969, Claimant commenced his regularly assigned third shift as train dispatcher at 12:01 A.M. at Carrier's Oelwein, Iowa train dispatching office. At 1:27 A.M., Claimant issued train order No. 105 which established a positive meet between train No. 142 and the opposing train No. Extra 938 West at Lorimor. Prior to the issuance of train order 105, and before Claimant had reported for duty, Train Order 221 had been issued and made complete at 10:06 P.M. Train Order No. 221 also identified Engine 938 as the leading unit on Train No. 161. In response to a phone call from the engineer and head brakeman at 3:28 A.M., Claimant issued Train Order 118 which superseded Train Order 221 and directed Train No. 161, engine 104A to take siding at Cummings and meet No. 142, instead of Lorimor. Train 142 passed Lorimor without meeting Extra 938 as directed in Train Order 105. One Conductor and Brakeman were dismissed from service; the Engineer was assessed 45 days suspension; another brakeman was assessed 30 days suspension; and Claimant was assessed 30 days suspension but was reinstated after 9 days as the suspension. The Organization contends that the charge lodged against Claimant was not a "precise charge" as required by Article 8 of the Schedule Agreement and that Carrier failed to "promptly" grant a hearing on Appeal, as also required by the said Article 8. The charges against the train crew and Claimant read as follows:

"Your responsibility in connection with failure to comply with Train Order No. 105 addressed to C&E No. 42 at St. Joseph, December 31, 1969 and made complete at 1:27 A.M., while you were assigned

as Train Dispatcher or crew members on Train No. 142 operating from Kansas City to Des Moines, ordered Kansas City at 10:00 P. M., December 30, 1969."

Carrier contends that Claimant was not personally charged with failing to comply with Train Order 105, but with being responsible for the failure of the train and engine crew to comply. Carrier also contends that the Organization did not request a conference until March 12 and that a conference was promptly granted as required in accordance with Rule 8 (c) which requires the employe to request a hearing.

On the merits of this dispute, it is apparent that Claimant was negligent in allowing the crew on Train 142 to have in their possession two confusing and misleading train orders. It is indeed fortunate that a major head-on collision did not occur. Therefore, this Board finds that as far as the merits are concerned, the discipline assessed was entirely justified. However, Article 8 (b) requires Carrier to notify in writing any train dispatcher charged with an irregularity which might result in such train dispatcher being disciplined; said Article 8 requires that he be notified of the precise charge. In this instance, Claimant was notified in writing to appear for formal investigation on the charge: "Your responsibility in connection with failure to comply with Train Order No. 105 * * *." Such language does not constitute a "precise" charge as required by Article 8 (b) of the Agreement for the reason that train dispatchers issue train orders — they do not comply with them. For this reason, the charge against Claimant is procedurally defective and the Claim will be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.

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