

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19771
Docket Number TD-19862

Benjamin Rubenstein, 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, hereinafter referred to as "the Carrier" violated the Agreement in effect between the parties, Rule 24 (a) and (b) thereof in particular, by its action in assessing discipline in the form of thirty (30) days deferred suspension on the record of Train Dispatcher A. H. Frazell following formal hearing on February 23, 1971. The record of said formal hearing fails to support Carrier's supposition of rules violation by Claimant, thus imposition of discipline was arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) Carrier shall now be required to clear Claimant's employment record of the discipline assessed and the charge which provided the basis for said action.

OPINION OF BOARD: On February 13, 1971, a near head-on collision occurred between two trains, one going East and the other one-West. The collision was avoided, when the conductor of one of the trains saw the headlights of the opposite train and notified the dispatcher (Claimant herein). He then moved his train to let the oncoming train pass.

The claimant was charged with: 1. lack of proper orders given to the conductor; and 2. delay in reporting the occurrence to the proper authorities, in violation of the Rules of the Consolidated Code of Operating Rules, providing for prompt reports.

A hearing was held as to the cause of the near accident and the responsibility, if any, of the claimant therein.

As a result of the hearing five employees were dismissed and claimant was given a "thirty day deferred suspension".

The facts indicate that during the day in question several conflicting orders of train movements were issued and cancelled. Because of the changes in orders a mistake was made in cancelling one order number, instead of another. The error was made by the dispatcher, who filled the shift prior to the start of the shift of the claimant herein. However, he did not advise claimant of it. Claimant took over the post at 4:24 P.M. and the near collision occurred at 5:20 P.M.

In its submission, the Carrier admitted:

"Although the erroneous train order was issued while claimant was on duty, under the operating rules he was not responsible for the issuance of the erroneous train order by Dispatcher Elwood. Furthermore, under the operating rules, he was not required to check and familiarize himself with train Order No. 72, because it was merely an annulling order and was not officially turned over to him by Dispatcher Elwood at the time of the transfer of orders at 4:24 P.M."

The above statement contradicts the position of the Carrier, that "claimant was responsible for a serious violation of operating rules ... for failing to familiarize himself with the orders he received, failing to find any fault with orders...."

We find that the record does not disclose substantial evidence to support the first part of the charge.

With reference to the violation of the rule for prompt reporting, the record shows that trainmaster Gillen received the report within fifteen minutes. Later the incident was reported to the Chief Train Dispatcher.

Although Rule 302 provides that Train Dispatchers must report promptly to the Chief Train Dispatcher, we are of the opinion that the delay of reporting promptly to the Chief Train Dispatcher directly, even though a technical violation of the Rule, was, under the circumstances, not such an offense as to warrant the disciplinary penalty imposed.

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

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Claimant was not guilty as charged, and the penalty imposed was in violation of the Agreement between the parties, arbitrary, capricious and unwarranted.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.