

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20385  
Docket Number TD-20379

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Norfolk and Western Railway Company  
( (Lake Region)

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

- (a) The Norfolk & Western Railway Company (NYC&StL) (hereinafter referred to as "the Carrier"), violated the effective Schedule Agreement between the parties, Articles 8(a), 8(b) and 8(c) thereof in particular, by its disciplinary action in assessing Claimant Train Dispatcher G. E. Semones fifteen (15) days' actual suspension following formal hearing held on May 15, 1972;
- (b) Because of said violation, the Carrier shall now be required to clear Claimant Semones' personal record of the charges involved in the hearing of May 15, 1972 and compensate him for all loss of time in connection with said suspension.

OPINION OF BOARD: On May 15, 1972 Carrier convened a formal hearing in order "...to determine the facts and responsibility, in connection with train Extra 237 West, AP-1 passing train order signal indicating train orders at Silver Creek, N.Y. at approximately 3:20 P.M. May 6, 1972." Claimant was asked to attend the hearing and was charged with failure to see that the train was properly cleared at Silver Creek. Following the hearing Claimant was assessed 15 days' actual suspension, the operator 30 days' actual suspension, the engineer 15 days' actual suspension and the remainder of the crew 10 days' actual suspension.

Carrier asserts that the evidence at the hearing demonstrates without doubt that Claimant did not properly clear Extra West 237. Carrier states that Claimant could have cleared the train at 2:57 P.M. at the same time he cleared the eastbound train, that his reasons for not clearing the westbound train were weak and invalid, and that he was guilty as charged. Carrier admits that even though Claimant was not solely responsible for the westbound missing the train order, his infraction was serious and could have had more serious consequences.

Petitioner argues that Claimant train dispatcher issued the proper train orders and had taken all the necessary steps prescribed by the rules to insure that the train would receive the instructions he had issued. Subsequent violations of the rules by the operator, engine crew or train crew were unrelated to Claimant's activities. The Organization insists that no operating rules were cited by Carrier in the notice of investigation during the hearing or in the notice assessing discipline with respect to Claimant's alleged dereliction. Petitioner asserts that Claimant was not required under the rules to clear the train immediately after the train order was made complete. A number of procedural arguments were also raised by the Organization; in view of our conclusions with respect to the merits we do not deem it necessary to deal with those issues.

The record is clear and it is undisputed that Claimant did not clear the train in question promptly at Silver Creek. However, the record is totally devoid of information or agreement support for the contention of Carrier that this action violated an operating rule. While the other employees disciplined as a result of the incident were held to have violated specific operating rules, none were cited with respect to Claimant. An examination of the transcript indicates that Claimant was not responsible, either by omission or commission, for the mistakes of other employees; his own actions could have, at worst, delayed the train. It was incumbent upon Carrier to indicate the nature and specific rules involved in the alleged transgression; this Carrier failed to do. At the outset of the hearing its purpose was outlined, as indicated above, and the incident in question involved the train passing the train order signal. Claimant was not directly or indirectly responsible for this occurrence, as we understand the testimony. It follows, therefore, that Claimant could only be found guilty of a particular act which could be described as violative of the operating rules in another respect; such allegation was not made by Carrier. The claim must 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 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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.