

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20386
Docket Number TD-20232

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Inc.

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

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties Article 24 thereof in particular, by its action in assessing discipline upon Train Dispatcher C. L. Vandeberg amounting to ten (10) days' record suspension. The record of formal investigation held on March 10, 1971 failed to establish any responsibility on the part of Claimant as charged, thus Carrier's action was arbitrary, capricious, and in disregard of correct judgment.

(b) Carrier shall now be required to remove the charges from Claimant's personal record which purportedly provided the basis for assessment of discipline.

OPINION OF BOARD: Claimant was charged with, and found responsible for, a violation of Rules 700 and 702 of the Consolidated Code of Operating Rules:

"700. Employees will not be retained in the service who are careless of the safety of themselves or others."

"702. Employees 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."

Carrier imposed a 10-day record suspension.

On the evening in question, Train MSL-1-03 departed Helena, Montana, toward Missoula, Montana with approximately 136 cars. A four unit helper engine, approximately 40 cars ahead of the caboose, was to be cut out at Blossburg, Montana.

The train ran past the leaving switch for the siding and the helper units were beyond the leaving switch. In order to permit using the switch at the leaving end of the siding it was necessary to move the rear portion of the train back to clear the switch. The helper units were uncoupled from the forward portion of the train. These units

and the rear portion of the train backed up on the main line in order to clear the passing track switch. The helper unit was then uncoupled from the rear portion of the train, and proceeded forward intending to stop beyond the passing switch and back the units into the passing track. However, the Claimant lined the passing track switch for the reverse movement before the helper units passed over it on the forward movement and the trucks of the lead unit ran through the switches trailing points.

Claimant was utilizing a Centralized Traffic Control (CTC) signal system. When he noted that one portion of the train was west of the switch and the other portion was east of the switch, he assumed that the helper units were prepared to enter the siding, and he lined the switch accordingly.

The Organization asserts that a Dispatcher must presume that other employees will abide by the operating rules. Here, it insists, the train crew violated a number of rules, including proceeding against a red signal.

In Award 5543 (Carter), the Board noted that an employee is not obligated to anticipate negligent or unexpected conduct on the part of other employees. In Award 20007 (Hays), the Board sustained the claim, finding that the Claimant was advised that a crew had completed switching, and then, upon request from another crew, he lined the signal and switches for it. The resultant derailment was not the Dispatcher's responsibility under the facts there presented.

This Board agrees that an employee may presume that other employees will observe operating rules and will not act in negligent manners. To rule otherwise could result in totally intolerable situations and severe exposures to liability. But, under this record, we feel that Claimant acted prematurely within the scope of his own knowledge.

Members of the train crew testified that the same procedure had been utilized before, and the action on the night in question was not an isolated incident. Of greater significance is the testimony of Claimant:

Q. "...Have you had occasions where the Helper units have been cut off in this manner before at Blossburg?

A. Yes.

Q. Then you have had occasions where the Helper units moved over the switch with the head portion of the train?

A. I can't recall any specific time on this.

Q. Do you recall any specific time where the units were cut off east of the switch and moved over the switch with the head portion of the train?

A. It is my understanding there have been occasions, yes.

Q. On this particular night, when the units were cut off at Blossburg, you were not aware of the location the helper units were standing were you?

A. No.

Q. They could have been on either side of the switch could they not?

A. Yes.

Q. Did you attempt to call the Engineer on the Helper units to see where he was located, which side of the switch?

A. No.

Q. Not knowing on which side of the switch the Helper units were on, why did you throw the switch? Did you just assume he was west of the switch? Is that right?

A. That is right, yes."

Thus, under this record, it is apparent that Claimant had knowledge of a procedure and his premature lining of the switch demonstrated that he was not fully attentive to his duties.

See Award 11555 (Webster):

"A reading of the record as a whole shows that several of the Carrier's employees were culpably negligent and that any one of several of them could have avoided this accident if they had been attentive. The record also shows that the individual Claimant must assume his share of responsibility in that he 'assumed' matters which as a matter of common diligence he had no right to..."

We will deny 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 not violated.

A W A R D

Claim denied.

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.

Labor Member's Dissent to Award 20386, Docket TD-20232

Award 20386, after setting out the facts involved in the incident in question, makes a statement which would have to be endorsed and approved by anyone having knowledge of railroad operation and/or operating rules, i.e.:

"This Board agrees that an employee may presume that other employees will observe operating rules and will not act in negligent manners. To rule otherwise could result in totally intolerable situations and severe exposures to liability."

However, after making this profound observation, Award 20386 then creates a totally intolerable situation and a severe exposure to liability by holding that "But, under the record, we feel that Claimant acted prematurely within the scope of his own knowledge."

Before the helper engines could and did run through the dual control switch in CTC territory, the train or engine crew had to and did violate the Operating Rules contained in the Consolidated Code of Operating Rules (edition of 1967) as follows:

1. When the helper engines backed up on the main line with rear portion of train violated Rule 262 reading "The reverse movement of a train or engine must not be made except by signal indication or as prescribed by Rule 271, without permission of control operator."
2. When the helper engines made the reverse movement and/or the following movement, i.e. proceeded forward after uncoupling from the rear portion of the train violated Rule 612 reading "A reverse movement within the limits of an interlocking, or a forward movement after making a reverse movement, must not be made without the proper interlocking signal indication or permission from the control operator."
3. When the helper engine passed the Stop signal in either direction violated Rule 240-A1 Fig. 1 reading "Stop before any part of train or engine passes the signal."

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4. When the helper engines made either the reverse or the forward movement violated Rule 269 reading "When a train or engine has been stopped by a Stop indication, if no conflicting movement is evident, a member of the crew must immediately communicate with the control operator and be governed by instructions received."

The above-mentioned rules are specific signal rules which the train (engine) crew violated as well as many other rules cited by the Carrier such as the dual control switch rules, etc.

Award 20386 cites from the Claimant's testimony claiming that the quoted portion indicated "that Claimant had knowledge of a procedure" and that "members of the train crew testified that the same procedure had been utilized before, and the action on the night in question was not an isolated incident". At best the testimony of the train crew could only be considered to be an admission of their prior rules violations. Award 20386 errors when a portion of Claimant's testimony is taken out of context and the testimony of Claimant regarding why the switch was lined is ignored. Prior to the quoted testimony in Award 20386 the following appears:

- Q. "For the record, will you relate when you operated the switch at Blossburg for the Helper units to enter the siding?"
- A. "I saw one portion of the train west of the switch and the other portion of the train was east of the switch. There were no trains in the switch circuit, so I proceeded to line the switch to the siding for the Helper."

This was the indication that the CTC panel showed and, unless the Claimant was expected to anticipate that the train crew would entirely and completely disregard all of the applicable operating rules, this was what the indication required, i.e. the switch be reversed and lined for a movement eastward from the main track onto the siding for the Helper units. This mandatory requirement was contained in the Burlington Northern Train Dispatchers' Manual, January 1, 1971, reading:

"The switches and signals must be lined sufficiently in advance to avoid delay to approaching train and must be restored to normal position immediately after the train has passed over the switch."

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While the instructions contained in the Train Dispatchers' Manual were revised effective May 1, 1973, the requirement that train dispatchers line switches and signals in advance, based on the indications shown on the CTC console, remain in effect.

In the original proposed Award submitted by Referee Sickles there appeared the statement:

"The misalignment caused the trucks of the lead unit to run through the switches trailing points."

However, in reargument it was pointed out that the switch could not be "misaligned" as shown in the Claimant's testimony reading:

Q. "If any portion of that unit had been between the headblock and the insulated joint, you could not have operated the switch could you?"

A. "No."

Of equal or greater significance is the testimony of the engine crew showing that the train or engines had to be beyond the signal protecting against movement over the switch before the switch and/or signal can be operated, viz:

Engineer Price sitting on the Fireman's side of the engine -

Q. "Is it a fact that the head portion of your train has to be a certain distance east of the switch before the Dispatcher can line the switch?"

A. "Yes, I know the fouling point up there."

Fireman Trickler operating the engine -

Q. "That being the case, Mr. Trickler, the Dispatcher would have to have thrown that switch while you were east of the insulated joint, wouldn't he?"

A. "That is the way I understand it, yes."

and

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- Q. "Mr. Trickler, after you made your backup movement up the main line, where did the leading unit stop in reference to the governing signal?"
- A. "Approximately right alongside of it I would say."
- Q. "After you cut your units off for your westward movement, did you notice, or did you look, at the signal?"
- A. "The signal couldn't have been anything else but red."

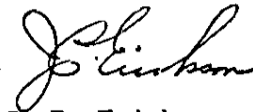
The discipline was assessed on the Claimant's alleged violation of Rules 700 and 702 of the Consolidated Code of Operation Rules (edition of 1967). Award 20386 cites these rules in full but does not further comment on Rule 700, or the provisions contained therein, which is a rule providing for the termination of employment for carelessness of the safety of themselves or others, nor does Award 20386 in any way hold that Claimant was careless of the safety of himself or others. Rule 702 provides that employees must report for duty at the designated time and place (which is not involved in this dispute, and that employees "must be alert, attentive and devote themselves exclusively to the Company's service while on duty". Award 20386 holds that Claimant did violate Rule 702 by not being attentive, stating "his premature lining of the switch demonstrated that he was not fully attentive to his duties". However, the Claimant train dispatcher was required under the above-cited provision of the Train Dispatchers' Manual to line the switch and signal sufficiently in advance to avoid delay to the train or engine.

If the Claimant did not line the switch and signal in advance to avoid delay as required by the rule contained in the Train Dispatchers' Manual, it follows that Claimant would not have been "fully attentive to his duties" and Rule 702 would have been violated when the train or engine was delayed because the switch and signal was not lined in advance. Yet Award 20386 holds that Claimant was not "fully attentive to his duties" and, therefore, in violation of Rule 702 because of "his premature lining of the switch". In effect Award 20386 finds that the Claimant should have anticipated that the train (engine) crew would ignore a multitude of applicable operating rules and Claimant should have violated the rule requiring that the switch and signal be lined in advance. Award 20386 has resulted "in totally intolerable situations and severe exposures to liability" because the train dispatcher is not to be allowed to "presume that other employees will observe operating rules". Whether the train dispatcher does line the switch and/or signal or does not line the switch and/or signal the train dispatcher will per se violate a portion of Rule 702 by not being "attentive".

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The Claimant was summoned "for investigation to ascertain facts to determine your responsibility for helper units running through the west CTC switch at Blossburg . . . ". The facts ascertained showed without question that the train (engine) crew violated numerous rules and the observation of almost any one of these operating rules would have prohibited the train from reaching the west CTC switch much less running through the switch. The Claimant clearly was not responsible for the helper units running through the switch.

Award 20386 does not perform its function of settling the dispute but can only serve to create or perpetuate disputes and is a disservice to both parties, and I most vigorously dissent.



J. P. Erickson
Labor Member