

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20634
Docket Number TD-20627

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Chicago and North Western Transportation Company

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

(a) The Chicago and North Western Transportation Company hereinafter "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 disqualification on and barred from positions of Assistant Chief Train Dispatcher and/or Night Chief Train Dispatcher or on positions performing relief service thereon following hearing held on February 6, 1973. The record of said formal hearing fails to support Carrier's charges of rules violation by Claimant L. R. Smith, thus imposition of discipline was arbitrary and unwarranted.

(b) Carrier shall now rescind the discipline assessed, clear Claimant's employment record of the charges which provided the basis for said action, and to compensate Claimant for wage loss sustained due to Carrier's action.

OPINION OF BOARD: This case involves the disciplining of Claimant for his alleged responsibility for failing to take action with respect to a hot box detector reading, which resulted in a serious derailment and damages of over \$144,000.

Carrier asserts that the record of the investigation contains substantial evidence supporting Carrier's decision and hence there is no valid basis for upsetting the disciplinary action. We do not agree.

The charge against Claimant asserts that he failed to take appropriate action when the hot box detector tape in question ".... disclosed a reading indicating heat beyond the permissive limits...." The transcript of the investigation reveals that both Claimant and Carrier's principle witness agreed that the tape in question showed a reading which was not beyond the permissive limits. There simply is no evidence in the record supporting the charge and the finding of guilt. Regrettable as the derailment was, there is no basis for attributing it to Claimant's failure to abide by Carrier's operating rules.

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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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.