

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20829
Docket Number TD-20635

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(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 in the form of thirty (30) days' actual suspension from service upon Train Dispatchers K. N. Specht and C. J. Stokes, following formal investigation held on June 1-2-3, 1972. The record of the investigation fails to establish responsibility on the part of Claimants as charged, thus Carrier's action can only be viewed as arbitrary, capricious and in abuse of managerial discretion.

(b) Carrier shall now be required to compensate Claimants for wage loss sustained, and to clear their employment records of the charges which purportedly provided the basis for assessment of discipline.

OPINION OF BOARD: This dispute concerns asserted responsibility of two Train Dispatchers regarding a fatal head-on collision between two of Carrier's freight trains.

The Organization alleges a number of procedural deficiencies, and raises defenses to the merits of the charges. Carrier denies procedural error, and insists that it has demonstrated that (while actions of others may very well have been improper) the actions of Claimants contributed to the accident; and that factor is a sufficient basis for imposition of disciplinary action. Be that as it may, in order to justify the suspensions, there must be a showing of reasonable causation between the actions and the accident.

The record demonstrates that restricting Train Order No. 263 was properly and timely issued concerning the two trains. However, Carrier states that neither of the Claimants arranged for an operator to report for duty at the location "where a hazardous condition existed", and that the discipline was imposed for a disregard of safety in releasing the operator from duty and failing to provide "special precautions."

The record in this dispute is voluminous. We have studied it at length in an effort to ascertain if Carrier has presented substantive evidence to justify its action. In reaching our conclusion, we have not been unmindful of the fact that the evidence shows that one of the trains proceeded against the "stop" signal without obtaining Train Order 263. We have also considered the evidence concerning the "hours of service" law which had a bearing on the fact that the operator at Yates City was absent at the pertinent time, as well as evidence of practices and procedures which had a bearing on this type of a situation.

Carrier has stressed that Claimants should have taken "special precautions" under the circumstances here in issue. In situations such as this, especially when a tragic, fatal accident is under consideration; there is a very human tendency to employ a certain amount of hindsight, and to engage in certain strained speculations as to possible steps which might have avoided the incident. At the same time, there may be a tendency to excuse certain oversights based upon continued utilization of procedures which were questionable at the outset.

In any event, we have searched all documents of record concerning Carrier's contention that Claimants should have taken "special precautions" under the applicable regulations. We are unable to find, with a sufficient degree of certainty, what special precautions the Dispatchers should reasonably have taken, under all of the circumstances, and within their area of responsibility - as a prospective judgment, unaided by misleading, after the fact, speculation. We will sustain the claim.

Accordingly, it is unnecessary to pass upon the procedural objections.

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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.