

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20915
Docket Number TD-20769

Louis Norris, 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 suspension from service of Train Dispatcher J. C. Hardy from November 9, 1972 to December 9, 1972, inclusive and Train Dispatcher B. J. Mays from November 11, 1972 to December 10, 1972, inclusive. The record of formal investigation held October 21, 1972 fails to establish responsibility on the part of the Claimants as charged, thus Carrier's action was arbitrary, unwarranted, and an apparent abuse of managerial discretion.

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

OPINION OF BOARD: This dispute involves two train dispatchers, Mays and Hardy, and hinges upon the following facts. On October 8, 1972, Claimant Mays issued Train Order No. 347 for delivery to operational personnel which contained the following: "No. 178 due to leave Bonneville October 8 is annulled Bonneville to Casper". It should have read "October 9". Thus, this was a misdated and improper train order.

Claimant Hardy, who relieved Mays, not only did not detect the error, but instead ordered it issued to the crew of an Extra train. As a result, confusion ensued among the train crew and this in turn led to the Extra train operating over its entire run against the schedule of a superior train.

Based on the foregoing facts, charges were duly placed against both Claimants and formal investigation was held on October 21, 1972. Both Claimants were found guilty as charged and the discipline imposed was suspension for a period of 30 days, plus entries of censure against each of their records.

Petitioner contends that such action by Carrier violated the effective Agreement on the basis detailed in the Statement of Claim. It is demanded, therefore, that Claimants be compensated for wage loss and that the censure be removed from their personal records.

At the outset, Carrier presses its objection that the claim is procedurally defective and must be dismissed inasmuch as it was not presented to the Superintendent as required by Rule 24(f), which relates to claims on "Grievances".

Petitioner responds that the instant claim was an appeal in a "Discipline" case under Rule 24(c), which required the appeal to be made "to the next higher proper officer" which in this case, it is asserted, was the Regional Assistant Vice President, and that this requirement was met.

It is not disputed that Carrier has the right to designate its officers to whom appeals are to be made in the step-up process set forth in Rule 24. The Organization points out, however, that such designations cannot have the effect of unilaterally revising the appeal procedures as agreed to between the parties to the Agreement.

The record is expansive on this issue and both sides have cited precedent in support of their respective contentions. Such precedents are not reconcilable and appear to be in conflict. Accordingly, although there may be some question as to procedural propriety, we are not inclined to hold that we are thereby jurisdictionally deprived of authority to resolve this dispute on its merits.

Analysis of the record evidence and the testimony adduced at the Investigation indicate conclusively that the hearing was properly and fairly conducted. Claimants were vigorously represented by Organization officers, full opportunity for cross-examination was afforded, and Claimants were permitted to present their version of the facts in full detail and without any violation of their basic rights.

During the investigation, Claimant Mays admitted that he had issued a misdated order in violation of the applicable rules. Claimant Hardy admitted that at the time he relieved Mays he signed for the transfer of all train orders, including Train Order No. 347, which were thereupon reissued. Although Hardy offered some token denials, the evidence showed that he too had acted in violation of the rules. Other witnesses testified to the ensuing confusion and the placing into motion of the Extra train referred to above.

On the basis of the record, therefore, we find the evidence conclusive that Claimants were guilty of neglect of duty in violation of the pertinent Rules, as charged. This, notwithstanding Petitioner's attempt to lessen the offense by differentiating between "errors" and "negligence and irresponsibility". For, irrespective of how categorized, the sensitive and highly responsible position of Train Dispatcher carries with it an obligation of care and judgment which is directly related not only to efficient railroad operations but to safety and well being of passengers and train crews. Claimants had the duty and responsibility to issue a proper train order. The fault in not doing so rests squarely upon them.

Petitioner asserts that others (the train crew, for example) were equally at fault. This may be so, but the fact remains that Claimants were responsible for the issuance of a misdated Train Order, and the claimed negligence on the part of the train crew did not absolve Claimants of their negligence.

See Award 19461 (Devine) which is practically on all fours with the case at hand. See also Awards 17163 (Jones) and 17761 (Kabaker).

In these circumstances, we cannot conclude that the discipline here imposed, thirty days suspension, was in any sense harsh or unwarranted or that Carrier acted arbitrarily, capriciously or in bad faith. Accordingly, 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.