NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21301
THIRD DIVISION Docket Number TD-21065

Joseph A. Sickles, Referee

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

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) thereof in particular, by its arbitrary and capricious disciplinary action in assessing Claimant Train Dispatcher G. E. Semones thirty (30) days' actual suspension plus permanent disqualification as Train Dispatcher following formal hearing held on November 10, 1973;

(b) Because of said violation, the Carrier shall now be required to reinstate Claimant G. E. Semones to his Train Dispacher's position with seniority, vacation and all other rights unimpaired, including group hospital, medical, surgical and life insurance benefits, and clear his personal record of the charges involved in the formal hearing of November 10, 1973 and compensate him for net wage loss suffered in connection therewith plus interest at the annual rate of six percent (6%) beginning with Carrier's scheduled pay date when said compensation was due him for time lost as Train Dispatcher.

OPINION OF BOARD: Claimant was charged with responsibility for permitting a train to go against the current of traffic, without affording proper protection under Rule 152. Subsequent to investigation, he was suspended for thirty (30) days, and was disqualified as a train dispatcher.

The record shows that when the train was passing Cascade, Claimant lined the switch in "reverse" position. However, the signal would not line properly. Claimant's manipulation of the switch did not correct the malfunction. He then notified the Chief Dispatcher of the difficulty. Claimant's attention was not drawn back to the Traffic Control Panel until a bell sounded and an illuminated light showed that the train had passed the westward signal.

The pertinent portion of Rule 152 specifies:

> "When a train or engine crosses over to or obstructs another main track, the movement must be protected, unless otherwise provided."

Carrier asserts that Claimant was experiencing signal difficulties and that Rule 152 required that he make positive notification to the crew so as to avoid placing them into a trap.

It may be that certain responsibilities in the incident are properly levied against the crew members; but that does not alter Claimant's responsibility. Certainly, in these types of circumstances, hindsight determinations are to be avoided. At the same time, however, it is approprate to consider the prospective actions which were reasonably required, given all of the facts and circumstances.

Our review of the transcript of investigations demonstrates a certain degree of confusion, on Claimant's part, as to the actual events on the day in question, as well as some rather vague indications of his responsibilities. But, be that as it may, the Claimant freely concedes that he was having switching difficulties, to the point that he attempted manual correction - to no avail - and he so advised two fellow employees. It would seem reasonable, at that time, for Claimant to have taken further action of notification to crew members, when a potential collision was a reasonably foreseeable (although avoided in this case) event. Instead, Claimant allowed his attention to be diverted to other matters.

The Board feels that the record contains a substantive showing, including Claimant's own testimony, to warrant the discipline imposed.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.