

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21537
Docket Number TD-21340

James C. McBrearty, 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 demoting Train Dispatcher D. J. Hart to Telegrapher, effective December 13, 1973. Claimant being permanently disqualified as train dispatcher is a harsh and excessive penalty in the light of the facts and circumstances involved.

(b) Carrier shall now be required to reinstate Claimant D. J. Hart as train dispatcher with all seniority and other rights intact, and to compensate him for wage loss sustained as a result of Carrier's action.

OPINION OF BOARD: Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

At approximately 12:20 PM on November 23, 1973, Extra 6501 West struck and damaged a motor car on the Carrier's single track main line near mile post 34 between Rathdrum and Athol, Idaho, on the First Subdivision of the Montana Operating Division. Train movements over this portion of the railroad are governed by "Centralized Traffic Control" (CTC), which is operated and controlled by dispatchers employed in the Carrier's dispatching office in Spokane, Washington.

CTC is a signal system under which train or engine movements are authorized by block signals whose indications supersede the superiority of trains for both opposing and following movements on the same track.

Motor cars operating in CTC territory are normally protected against the movement of trains by authority of the train dispatcher. In such instances, the train dispatcher provides signal blocking on the CTC machine for the specified territory over which the motor car movement occurs. The train dispatcher also issues a CTC track permit to the motor car operator showing the time authorized for such movement, and additionally issues instructions to "report clear" after the movement has been completed. The blocking must not be released or the signals cleared to permit a train movement into the protected territory until the motor car operator reports to the train dispatcher that he is in the clear.

During the time in question in the instant case, the Claimant was employed as a regularly assigned dispatcher in the Carrier's Spokane train dispatching office. His assigned hours on the date the incident in question occurred were from 8:00 AM to 4:00 PM. The dispatching territory where the accident took place was under Claimant's jurisdiction.

A review of the record in the instant case reveals that Claimant admitted he was responsible for the collision in that he lifted the block for the motor car permit off the board, and let train No. 97 enter the block before the expiration of the authorized time for the motor car. In so doing, Claimant further admitted that he violated Rule 20 of the Train Dispatchers' Manual, and Rule 990 of the Consolidated Code of Operating Rules.

Thus, the Board has no alternative but to conclude that there is substantial evidence to sustain a finding of guilty.

Claimant's work record since June 3, 1967, shows a 15-day suspension on June 3, 1967 for responsibility in connection with a collision, a 20-day suspension on August 27, 1968 for responsibility in demolishing a motor car, a 30-day suspension on July 18, 1970, for failure to include a train on a line-up as provided in the Train Dispatchers' Manual, and a dismissal on May 12, 1972, for violating Rules 990, 702 and General Rule A. This dismissal was rescinded on October 17, 1972, and Claimant was reinstated with former rights.

In light of Claimant's recent work record and the seriousness of the incident in the instant case, the Board cannot find that Carrier's demotion of Claimant from a Train Dispatcher to a Telegrapher, effective December 13, 1973, and Claimant's permanent disqualification as a Train Dispatcher, is unfair and excessive. Therefore, 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 19th day of May 1977.