

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22468
Docket Number TD-22421

Robert A. Franden, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(The Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective September 1, 1949) between the parties, Article VII thereof in particular, when the Carrier assessed twenty (20) demerit marks on the personal record of Extra Train Dispatcher J. M. Munoz (hereinafter referred to as "the Claimant") based on an investigation held on August 26, 1976. The record, including the transcript of said investigation, fails to support the Carrier's charge of rule violation by the Claimant thus imposition of twenty (20) demerit marks was arbitrary and unwarranted.

(b) The Carrier shall now be required to remove the twenty (20) demerit marks and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: The facts in the instant case are not in dispute. Extra train 3667 West in violation of a red signal entered an interlocking which it occupied for one minute before backing out. The claimant was on duty as dispatcher at the time. The Carrier takes the position the claimant had the responsibility to report the violation under operating Rule E:

"E. Employees must do everything in their power to see that the rules and special instructions are followed by all, and they must promptly report violations."

The claimant takes the position that he was not aware of the violation and therefore could not possibly have any responsibility to report it.

There are three devices in the dispatcher's office which would advise him that the train had run an interlocking signal displaying red: 1) bell that rings when a train passes an interlocking signal 2) a TCS Graph recording and 3) the light system on the dispatcher's panel.

The Carrier takes the position that if claimant did not detect the violation he was not being attentive to his duties in violation of operating Rule E. It may be reasonable to assume that an attentive dispatcher would have noted the violation but this does not prove that claimant failed to report something of which he had actual knowledge. The claimant was found guilty of failing to report the violation under Rule E not failure to be attentive to his duties under some other rule. The transcript of the investigation does not support the Carrier's position that it has met the burden of proof in the instant case. It has not. We will not let the fact that the discipline is light influence our decision. The cases are clear as to the Carrier's burden to support its charge with evidence of probative value.

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 31st day of July 1979.