

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22985  
Docket Number CL-22782

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8685)  
that:

1. Carrier acted in an arbitrary, capricious, unjust and discriminatory manner when on February 17, 1978, it assessed an actual suspension of thirty (30) days against Train Dispatcher P. E. Oliver, Jr.

2. As a result of its' arbitrary, capricious, unjust and discriminatory action Carrier shall now be required to:

- (a) Compensate Train Dispatcher P. E. Oliver, Jr., for all time lost as a result of said action on the part of the Carrier, February 3, 1978, to and including March 5, 1978.
- (b) Clear and expunge the thirty (30) day actual suspension from the record of Train Dispatcher P. E. Oliver, Jr., and any reference thereto.
- (c) Pay Train Dispatcher P. E. Oliver, Jr., interest in the amount of no less than 18 per cent compounded annually on the anniversary date of this claim.

OPINION OF BOARD: Claimant was employed by the Carrier for twelve (12) years prior to the assessment of the 30-day suspension, which is the subject of this dispute. At the time discipline was imposed, he had a clean record. By letter dated February 6, 1978, Claimant was issued the following notice of formal investigation:

You are hereby charged that during your 7:00 a.m. to 3:00 p.m. tour of duty as Pocohontas District Dispatcher, at approximately 10:30 a.m., Friday, February 3, 1978, with your failure to properly protect High Rail Vehicle No. 2599, moving westward on westward main track between Bluefield, Virginia, and Bluestone Crossover, by giving Train No. 66, Engine 271, a proceed signal at Bluestone Crossover to proceed eastward on westward main into block occupied by High Rail Vehicle No. 2599.

The investigation was held on February 9, 1978. The transcript of that investigation revealed that Claimant did, in fact, set up a move that resulted in a near head-on collision between eastbound Train No. 66 and westbound High Rail Vehicle No. 2599 at Bluestone crossover. The unrefuted testimony of Chief Train Dispatcher, G. R. Nuckolls, revealed that Claimant removed a locking device from an activating button and gave Train No. 66 the clear signal at Cooper Tunnel which caused the incident under investigation. The transcript also revealed that Claimant knew, but momentarily forgot, that switch lever 0-41, which controlled the west crossover, was flagged "out of service" and that Train No. 66 could not, as a result, be crossed over to the eastbound main track at Bluestone. Claimant apparently mistook the out of service tag for another, and thought that the switch was in service. Claimant eventually realized his error and called Train No. 66 with instructions to stop. The train was able to stop about three hundred (300) yards west of the high rail vehicle.

Claimant defended his actions of February 3, 1978, by stating that the traffic control equipment in the dispatching office for the westbound main track was not working properly. The Organization alleged that three (3) Signal Department employees could have been working on the section of track involved in the incident causing a "shunt" to exist which, in turn, caused a signal to give a clear aspect and disguise the development of the near head-on collision.

Claimant's defense excused neither his momentary lapse of memory nor the fact that he did actually set up the dangerous move. Claimant's responsibility for his activities in routing the two movements was irrefutable and the theory that the activities of the three (3) employees might have caused an equipment failure carries little weight in light of the uncontested findings establishing Claimant's culpability.

Regarding the discipline assessed, a thirty (30) day suspension was not out of proportion to the seriousness of the offense. This Board accordingly denies 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;

Award Number 22985  
Docket Number CL-22782

Page 3

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 29th day of September 1980.