

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24145
Docket Number TD-23838

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Seaboard Coast Line Railroad Company

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the Agreement between the parties, Articles IX(a) and (b) thereof in particular, when it assessed 30 demerits as discipline to the personal record of train dispatcher H. K. Wilson in connection with investigation held at Waycross, Georgia, November 7, 1979. The record makes it adequately clear that Mr. Wilson committed no rule violations.

(b) The Carrier shall be required to clear Mr. Wilson's personal record of the 30 demerits and of all reference to the matter here involved.

OPINION OF BOARD: Claimant Train Dispatcher H. K. Wilson and Clerk-Operator G. M. Kelly were jointly served with an October 10, 1979 notice of investigation "to develop the facts and place responsibility, if any, in connection with irregularities in transmitting and handling Order No. 2, October 17, 1979 at Waycross, Georgia, while you were working as train dispatcher and operator respectively". The investigation was held on November 7, 1979 and on November 20, 1979 Claimant was assessed the penalty of 30 demerits.

A review of the record before this Board establishes that the October 10, 1979 notice of investigation provided sufficient particularity to permit Claimant to properly prepare a defense for the allegations contained therein. The Organization asserts that aside from the testimony of the first trick operator that the train order in question from the prior shift (Claimant's) had been in error and had to be redone, the record only consists of both principals testifying that they had followed all confirmatory procedures and rules. Nevertheless the Carrier, unable to establish who had erred, disciplined both the Claimant and the Clerk. Both cannot be guilty, and the Carrier has, therefore, not sustained its burden of proof.

The starting point is that an erroneous train order came out of Claimant's trick. It should have read "mileposts 616.8 to 618.6". Instead it read "616.6 to 616.8". The record further establishes that the order in the Train Dispatcher (Claimant's) Book was the proper one. It should also be noted that the elaborate and detailed operating rules concerning "mutual" confirmatory procedures for such orders are intended to avoid such errors. Only Claimant and Clerk Kelly were involved in the transmittal of the order from their trick. Thus the reasonable presumption arises that there must have been some mutual mishandling of the confirmatory procedures between Claimant and the Clerk. Carrier is entitled to utilize such a presumption of mutual or shared guilt as part of its proof in a disciplinary proceeding. There was substantial evidence to sustain the Carrier's decision to discipline Claimant for this infraction. The penalty assessed was a reasonable one.

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.

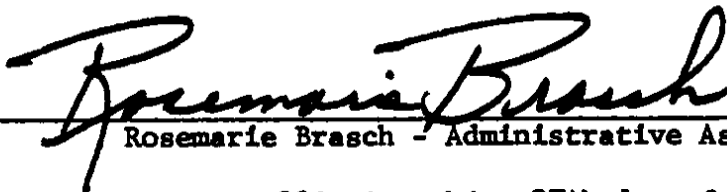
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.

