

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24828
Docket Number TD-24552

George S. Roukis, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Southern Railway Company

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

"Request that Train Dispatcher W. F. Curtis' record be cleared of the charges preferred against him on Oct. 11, 1980 and that he be paid for all time lost including interest, in connection therewith."

OPINION OF BOARD: In this dispute, Claimant was charged with three (3) separate distinct infractions. The October 11, 1980 Notice of Investigation setting for the asserted offenses is reproduced, in part, hereafter:

"This investigation is being held in connection with the following instances:

On October 8, 1980, while working as First Trick Dispatcher you issued and completed Train Order No. 621 to Extra 2727 East at Marshall, N.C., at 1:08 PM. You cleared that train at 1:09 PM; and, after the order had been delivered to the head end of the train and the crew discovered it had no authority to run ahead of First Class Train No. 164, you instructed Operator Delph to have the crew add that authority to Train Order No. 621.

For making the addition to the order after it had been repeated, you will be charged with the violation of Operating Rule 205; and, for not having issued proper train orders, you will be charged with violation of Train Order Rule S-B.

Again, on October 8, you issued line-up No. 609 to Assistant Track Supervisor Cleland at Bulls Gap, Tennessee, effective between 11:35 AM and 5:01 PM. You omitted Extra 3311 West, which went on duty at Bulls Gap at 3:30 PM and left at 3:55 PM.

For failing to issue a proper and complete line-up, you will be charged with the violation of Operating Rule 752.

During the Third Shift tour of duty starting at 11:00 PM. October 9, 1980, and ending at 7:00 AM, October 10, 1980, you allowed Train No. 224, a first class train to be delayed by Train No. 162, a second class train. Train sheet records show that No. 162 passed Marshall, North Carolina at 12:50 AM and No. 224 passed there at 1:02 AM, and that No. 162 passed the yard limit board at Asheville at 1:40 AM and No. 224 at 1:50 AM.

Obviously, No. 162 should not have been allowed to precede No. 224 that far and, certainly, having done so, should have been made to clear at Volga.

For allowing this to happen, you will be charged with violation of existing instructions issued by the Chief Dispatcher prohibiting delays to Train No. 224 and 223."

An investigation was held on October 31, 1980 and Claimant was subsequently found guilty of each of the charges. He was assessed a suspension of ninety (90) days duration which ran from October 31, 1980 through January 28, 1981. This disposition was appealed.

As to the first charge, Carrier contends that he committed a serious rule infraction when he disregarded the operating requirements of Operating Rule 205 and issued to Extra 2727 East at Marshall, N.C. an order to run ahead of First Class Train No. 162, and for making an addition to his order after it had been issued.

The Organization contends that it was not an unusual practice to add verbiage to a previously issued order, particularly for run ahead orders. It argues that when Claimant was informed that Train No. 164 was overdue, some type of authority for Extra 2727 East was needed to permit it to run ahead of Train No. 164. It avers that Claimant properly added to Train Order No. 621 when he was made aware of this situation.

In our review of this charge, we concur with Carrier that Claimant violated Operating Rule 205 when he added to Train Order No. 621. This rule is pointedly specific and it proscribes additions to train orders after they have been issued. We find nothing in the record that would reasonably extenuate a variant application, and Claimant's actions were unequivocally violative of this rule. The Organization's argument that the trackage involved was protected by automatic block signals is without mitigative significance.

As to the second charge, Carrier contends that Claimant failed to issue a proper and complete line up when he omitted Extra 3311 West, which went on duty at Bulls Gap, Tennessee at 3:30 P.M. and left at 3:55 P.M. It asserts that he did not issue any authority for Extra 3311 West's movement prior to the time he was relieved from duty by the second shift train dispatcher and avers that such failure constitutes a violation of Operating Rule 752. It maintains, in effect, that the line up he issued extended for five (5) hours and twenty six (26) minutes and not the four (4) hours maximum required by Operating Rule 752.

The Organization contends that there was a valid reason for omitting Extra 3311 West's movement from line up No. 609 to the Assistant Track Supervisor since when Claimant made a written transfer to the relief dispatcher he indicated, at least to the best of his recollection, that there was an outstanding line-up and a train called that was not on the line-up. It argues that because the train was not allowed to proceed until after Claimant was relieved by another shift dispatcher, Claimant could not logically be charged with omitting Extra 3311 West.

In our review of this charge, we agree with Carrier that Claimant violated Rule 752. It states in part:

"The maximum life of a line-up is four hours except for territory where the Superintendent specifically authorizes a longer time."

Close reading of the investigative transcript clearly indicates that Claimant failed to issue a proper and complete line. The record shows that on October 8, 1980, he issued line-up No. 609 effective 11:35 A.M. to 5:01 P.M., and then subsequently arranged for the crew of Extra 3311 West to be called to go on duty at Bulls Gap at 3:30 P.M. In fact, he acknowledged that he was present when Extra 3311 West received its authority to operate within the time limits of an order which did not contain that movement. We find that he violated Operating Rule 752 when he omitted Extra 3311 from line-up No. 609 and extended the line-up beyond four (4) hours.

As to the third charge, Carrier contends that Claimant violated the Chief Dispatcher's existing instructions prohibiting delays to Train No. 224 and 223 when he allowed Train No. 224, a first class train to be delayed by Train No. 162 (second 136), a second class train. It argues that he not only permitted Train No. 162 to remain ahead of Train No. 224, but he also failed to correct the situation, especially when he could have cleared Train No. 162 at Volga. It asserts that Train No. 162 delayed Train No. 224 between Marshall and Craggy, which was violative of the specific instructions that Train No. 224 must hold to the main track.

The Organization contends that when Claimant relieved the train dispatcher on the night of October 9, 1980 at 11:00 P.M., he discovered that the dispatcher had issued Train Order No. 660 authorizing Train No. 162 to run ahead of Train No. 224 between New Line and Craggy. It acknowledges that Train No. 162 was running ahead of Train No. 224 but asserts that Train No. 162 did not delay the first class train. It avers that Train No. 224 did not radio Train No. 162 that it was delayed and argues that Claimant took steps to contact the crew of Train No. 162 to determine the train's location. It further argues that he tried to contact the Operator at Asheville to ascertain if an arrangement could be made to allow Train No. 224 to clear No. 162.

In our review of this charge, we agree with Carrier that Claimant could have more diligently monitored the movements of Train Nos. 224 and 162. However, we cannot agree that Train No. 224 was delayed since we have no explicit indications as to the exact time it was delayed. This is a pivotal consideration. The Organization's averment that the crew of Train No. 224 did not report any delay is certainly persuasive, and when counterpoised against Claimant's actions do not reflect per se an unmistakable violation of the Chief Dispatcher's instructions. To be sure, he should have been more closely attuned to the movements of the respective trains, but whether he caused a definable, measurable delay of Train No. 224 is not precisely ascertainable. Of course, it would have been prudent for Claimant to permit Train No. 224 to pass Train No. 162 at Volga, but this is now hindsight. Upon the record, we find no defensible basis to sustain this charge.

In considering the penalty for the two (2) charges we sustained herein, we believe that a sixty (60) day suspension is warranted for these offenses. If Claimant were found guilty of the third charge we would not have reduced the original ninety (90) day suspension since it was neither unreasonable nor an abuse of managerial discretion when his past disciplinary record is considered. Offenses of this type are indeed serious and cannot be tolerated. The safety of rail operations is at stake. Claimant is to be paid for thirty (30) of the days he served in suspension but this back pay award is not to contain interest payment.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Over - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984