

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25054
Docket Number TD-24886

Hyman Cohen, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Chicago and North Western Transportation Company

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

"...(r)equst that Train Dispatcher M. J. Turnbull's record be cleared of the charges and that he be compensated for all losses sustained as a result of the unjust and unreasonable discipline (Discipline Notice No. 9316 dated October 5, 1981) in accordance with Rule 24(c) of the Train Dispatchers' Agreement."

OPINION OF BOARD: The Claimant is employed as a Chief Dispatcher at Boone, Iowa. Following a formal investigation which was held on October 4, 1981, the Claimant was assessed a five (5) day deferred suspension for allowing a train to depart from Marshalltown Yard on September 27, 1981 with seven (7) cars that had inoperative air brakes. It should be noted that the Yardmaster was also given a five (5) day deferred suspension for the same infraction.

The first issue to be resolved is whether the Carrier's failure to send the Claimant's representative a copy of its decision within "seven calendar days" after the investigation as required by Rule 24 (a), nullifies the disciplinary action. In the absence of evidence to the contrary, it is presumed that when the Claimant received the Carrier's decision within "seven calendar days", his representative or agent had constructive knowledge of the decision. See Third Division Award No. 11775. Of equal, if not greater importance, is that the Carrier's failure to furnish the Claimant's representative with a copy of the decision within seven (7) calendar days did not impair the Claimant's right to a fair hearing or his right to appeal the decision. Clearly, the purpose of furnishing the Claimant's representative with a copy of a decision within "seven calendar days" is to enable the Claimant to perfect his appeal, which was done in this case. Third Division Award No. 20423.

Turning to address the second procedural matter, the Carrier asserts that the Organization failed to handle the instant claim in the "usual manner" as required under Section 3, First (i) of the Railway Labor Act, because it bypassed the appropriate Division Manager and filed its appeal with the Manager of Labor Relations. Pursuant to an inquiry from the Organization on the processing of "claims and grievances", the Carrier, in a letter dated December 13, 1976, indicated that all matters, including disciplinary cases, should be handled with the appropriate Division Manager and it also stated that appeals must be handled in accordance with Rule 22(a)(3). It is the judgment of the Board that the Organization's inquiry was limited to "claims and grievances" under Rule 20 rather than an appeal under Rule 24 which covers disciplinary matters. To sustain the Carrier's position would mean that in this case an appeal must be filed with Division Manager Maybee from the decision which he (Maybee)

rendered after the investigation. It is axiomatic that this "superfluous or redundant action" would lead to "imposing a patently unproductive step in the handling of the appeal of discipline, which would be contrary to the intent of the parties as spelled out in Rule 24 ****". Third Division Award No. 20973. Furthermore, the Carrier has not carried its burden of proving that since December 13, 1976, the usual manner of handling claims involving discipline has been for the Organization to file an appeal from the decision rendered by an official to the same official who is the appropriate Division Manager. Accordingly, the appeal by the Organization to the Manager of Labor Relations does not preclude the Board from jurisdiction to consider the merits of the instant dispute.

Proceeding to the merits, the Board finds that on September 27, 1981 the Claimant was aware that there were seven (7) cars in Train 272's Extra 904 East, that had inoperative brakes before he permitted the train to depart from Marshalltown. Since Marshalltown is a repair point, the Claimant's action was in violation of Rule 436 (A) which, in relevant part, provides as follows:

"Unless specifically authorized not more than two (2) consecutive cars shall be operated in a train with the air brakes cut out.

Movement may not be authorized beyond the nearest point where cars can be repositioned in a train, set out, or to the nearest repair point, whichever occurs first."

The Organization contends that the Claimant did not violate Rule 436 because more than 85% of the cars had operative brakes and not more than two (2) consecutive cars had their air brakes cut out. However, under Rule 436 (A), trains may operate with these deficiencies only to a repair point. Accordingly, the cars should not have proceeded beyond Marshalltown.

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

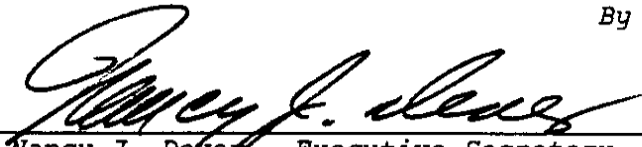
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois this 4th day of October 1984.

