

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25138
Docket Number TD-23925

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(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, including Article VII thereof, when the Carrier assessed thirty (30) demerit marks on the personal record of Extra Train Dispatcher D. L. Palmer (hereinafter referred to as "the Claimant") based on an investigation held on October 17, 1979. The record, including the transcript of said investigation, fails to support the Carrier's charge of rule violation by the Claimant thus imposition of thirty (30) demerit marks was arbitrary and unwarranted.

(b) The Carrier shall now be required to remove the thirty (30) demerit marks and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: Claimant here, assessed 30 demerits, is charged with violation of two Carrier rules:

Operating Rule 775

"Train dispatchers report to, and receive their instructions from, the chief dispatcher. They have supervision over the movement of trains, and employes connected therewith, on their assigned territory.

Train dispatchers must know and comply with 'Instructions for Train Dispatchers'.

Train dispatchers must take necessary precautions for the safe movement of trains at all times, issuing necessary train orders or instructions as required."

Rule 17 of Instructions for Train Dispatchers

"17. Train orders, instructions and information given by the Train Dispatchers must be such as will not place any employe in a position requiring rule infraction or 'shortcuts' in complying therewith."

In the geographic area which provides the setting here there are two main tracks: a northward main dispatched by Santa Fe, and a southward main track dispatched by Rio Grande. On the morning in question, a northbound coal train stalled on the northward main which was being dispatched by the Claimant here, a Santa Fe dispatcher. A decision was made to have a following northbound train cut off its locomotives and operate without cars northbound on the southward track to a point beyond the stall, where it was to cut back to the northward track, and then position back into the head of the stalled train and pull it over the hill it had been unable to climb.

All operating personnel (dispatchers, train crew, etc.) involved on the day in question acknowledged they knew, 1), the southward track was dispatched by Rio Grande and, 2), train order authority was necessary to authorize movements against the current of traffic (i.e., in this instance, relief engine operating northbound on southward Rio Grande dispatched track).

The relief locomotive, after passing through a switch controlled by the Claimant Santa Fe dispatcher (northward track), began a run north on the southward (Rio Grande controlled track) without proper train order authority from the Rio Grande dispatcher.

The issue in this case is Claimant's responsibility, if any, for the relief engine's unauthorized run north on the Rio Grande controlled south track.

It appears from the record that the brakeman on the relief engine, following a phone conversation with Claimant, advised the locomotive engineer to proceed northbound on the southward track.

Both Parties here rely on, and largely rest their cases on, the transcription of the taped phone conversation between Claimant and relief engine brakeman:

"Crew Member: (Inaudible)

Dispatcher: I'm sorry, sir, I can't hear you,
can you speak louder?

Crew Member: (Inaudible)

Dispatcher: Okay, I guess what they want you to do
is just go on ahead--the switch should be
lined for south track and I guess that [sic]
want you to flag on down their [sic] and
help the 152 back over the hill.

Crew Member: (Inaudible)

Dispatcher: Yeah, go ahead and check the points and
flag on down."

Carrier asserts that this conversation constituted dispatcher authorization to proceed north on the southward main which Claimant had no authority to render. The Organization asserts, on the other hand, that the brakeman, knowing that only the Rio Grande dispatcher could issue train order authority for the contemplated move, had no right to interpret the statement (made by a Santa Fe dispatcher) "... I guess that [sic] want you..." etc. as an authorization or to assume that the statement released him from the necessity of obtaining the proper train order authority he needed from Rio Grande.

Clearly, the central (culpable?) figure in this unfortunate incident was the brakeman on the relief engine. The only question before us, however, is whether Claimant here, through her actions, contributed to or failed to prevent (in any significant way) the apparent misfeasance of the brakeman.

Although there is some measure of uncertainty and ambiguity here, Claimant's declarations to the brakeman could allow a reasonable person to draw the inference that an authorization to proceed north on the southbound track was being communicated. This interpretation of Claimant's statement being possible (even reasonable), and assuming that Claimant knew (as she testified) that she had no authority to give permission for the run in question and did not intend her statements to be so interpreted, it became her responsibility to at least mention to the brakeman that, of course, the intended run required Rio Grande permission. Whether the brakeman was possibly ignorant of the fact that Claimant lacked authority or whether he was willfully indifferent to the known requirement to obtain Rio Grande authorization is irrelevant. Once Claimant made statements from which permission could be inferred, nothing in this regard should have been presumed or left to chance by Claimant. Accordingly, claim here must be denied.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.

