

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25556
Docket Number TD-25278

Eckehard Muessig, Referee

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

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

"...request that Claimant Train Dispatcher L. D. Diersen's record be cleared of the charge and he be compensated for all losses sustained (re investigation held 1/20/82, 20 days actual suspension)..."

OPINION OF BOARD: The incident leading to this dispute occurred when a Jordan Ditcher operating in snow plow service collided with the rear end of Train No. 395 Extra West.

The Claimant, as well as other Employees, was notified to attend an investigation concerning responsibility for the collision. Subsequent to the investigation, the Claimant was suspended for twenty days, based upon the Carrier's determination that the Claimant had failed to advise the crew of the snow plow of the location of other trains. Other members of the Carrier's work force who were involved in the incident also were assessed discipline.

The Organization advances its claim on both procedural and substantive grounds. On the former, it asserts that the Carrier failed to provide the Claimant a proper statement of the charge and that the Claimant's representative was not provided a copy of the written decision of the discipline administered within seven calendar days. With respect to the merits of this dispute, the Organization principally argues that responsibility for the collision lies in the failure of the crew of the snow plow to proceed at restricted speed as instructed by the Claimant.

With respect to the procedural aspects progressed by the parties, the Carrier contends that Rule 20 of the Parties' Agreement is controlling. Under this rule, this claim would be barred because it was not timely progressed within nine (9) months from the date it was denied by the highest Carrier Officer designated to handle such dispute. Moreover, also on procedure, the Carrier asserts that the Organization did not progress its claim in the "usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes" as required by Section 3 First (i) of the Railway Labor Act. Accordingly, the Carrier maintains that the Board lacks jurisdiction.

We have carefully considered the Parties' procedural contentions and find that this dispute is properly before us for the following reasons. With respect to the Organization's delay in progressing this claim, while the time that elapsed strains the intent of key Railway Labor Act provisions with respect to the orderly and rapid disposition of claims, the Organization is technically correct in that Rule 24, which does not contain a time limit

constraint, is controlling under the circumstances herein. Rule 20, as argued by the Carrier, does not apply. Concerning the "level of appeal" argument of the Carrier, we find the Organization's contentions persuasive, given the particular circumstances of this case.

Turning to the Organization's contention that its representatives were not provided a copy of the disciplinary decision within seven days after it was rendered, we note that the controlling Agreement is a negotiated instrument of the Parties that must be observed by both Parties to provide it substance. However, when the clear purpose of the rule has not been subverted and the rights of those covered by this instrument have not been prejudiced, the Board does not easily sustain actions on procedural error. In the instant case, the purpose of the contested portion of the rule is to enable the Claimant to properly progress his appeal. Here, we do not find that the failure to strictly adhere to the seven day time period prejudiced the Claimant's rights. (See Third Division Awards 24874 and 25254, among others, upholding this general principle.)

With respect to the charge notice, it is apparent from the record before us that the Claimant received the notice and understood the purpose of the investigation. On the evidence here, we do not find a rule violation.

Finally, turning to the question of whether Claimant is guilty of the charge, while there are many ramifications to this aspect of the claim, we find that the Carrier has met its burden of proof. The Claimant was required to inform the crews involved that the snow plow was being operated and the location of other trains. The evidence is conclusive that he failed to fulfill this requirement of his job. Accordingly, while the Ditcher crew was also remiss in their responsibilities and disciplined by the Carrier, the discipline assessed the Claimant for his role is not excessive under the circumstances here and it will not be disturbed.

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. Devor - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.