

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25958
Docket Number TD-25931

Charlotte Gold, Referee

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

STATEMENT OF CLAIM:

"Case No. 1 - Carrier file 82-83-9-D"

"...request that Train Dispatcher D. F. Montgomery's record be cleared of the discipline (10 days deferred suspension) and that he be compensated for all losses sustained as a result in accordance with Rule 24(c) of the Train Dispatchers' Agreement."

"Case No. 2 - Carrier file 82-83-10-D"

"...request that Train Dispatcher D. F. Montgomery's record be cleared of this unjust and unwarranted discipline (10 days deferred suspension) and that he be compensated for all losses sustained as a result thereof in accordance with Rule 24(c) of the Train Dispatchers' Agreement."

OPINION OF BOARD: When Claimant, a third shift Dispatcher, arrived at work on May 31, 1983, he was told that the previous Dispatcher had had to leave early because of illness. That Train Dispatcher had been given instructions concerning revisions in train orders, which she had not had time to handle. Carrier alleged that Claimant failed to check his "live file" and thus changes in the train order were not made. (The Organization maintained that Claimant did check the file, but saw no requested change in the orders.)

Claimant was directed to attend an investigation into the following charge:

"Your responsibility for your failure to properly perform your duties when you failed to issue the proper slow orders for the suburban territory which were issued by the Assistant Division Manager - Engineering on May 31, 1983."

He was found guilty as charged and was assessed a ten-day deferred suspension.

On July 21, 1983, Claimant was assigned to supervise the work of an inexperienced Train Dispatcher. Carrier alleged that the two Dispatchers allowed a yard job to proceed into suburban territory in violation of a curfew. (The Organization maintained that Claimant had advised against the move and that it was the inexperienced Train Dispatcher's decision alone that resulted in a delay.) Claimant appeared for an investigation into the following charge:

"Your responsibility for allowing Job 89 to depart JN at 8:26 A.M. during curfew in violation of General Order No. 1 dated January 1, 1983 which resulted in delay to suburban train #40 at approximately 9:05 A.M., Thursday, July 21, 1983, while you were employed as train dispatchers on Job 007 at West Chicago, Illinois."

Following the hearing, Claimant was assessed a ten-day deferred suspension.

These two cases were consolidated into one claim for purposes of submission to this Board. In the first case, Carrier contends that Claimant had an obligation to check the "live file," which he failed to meet. He acknowledged at the hearing that he did not look at it until later in the morning and that he must have overlooked the instruction. In the second, Carrier argues the Claimant acknowledged that he did nothing to prevent the inexperienced Dispatcher from allowing the yard job in suburban territory.

It is the Organization's position that Claimant cannot be held responsible for issuing the requested change in slow orders, because he had no knowledge of it. In the second case, it points out that when Claimant was told to report for the supervisory assignment, he advised the Chief Train Dispatcher that he had never worked it before. (He had previously sought training for the position and had not received it.) The Chief Dispatcher told him that the inexperienced Dispatcher knew how to run the suburban fleet and there should be no problem with it.

Based upon a review of the record of the first case, this Board finds that Claimant did not properly perform his duties when he failed to issue the proper slow orders. We also find that the discipline imposed was commensurate with the severity of the infraction. Ample evidence suggests that instructions concerning the train orders were contained in the "live file" and that had Claimant performed his duties properly, the appropriate revisions would have been made. A ten-day deferred suspension is not excessive under such circumstances.

In the second case, we must conclude that there was not sufficient probative evidence brought forth at the investigation to support Carrier's contention that Claimant was culpable in causing delay to the suburban train. The record reveals that Claimant had given his superior warning that he was inexperienced in the position that he was called upon to supervise and that the inexperienced Dispatcher acted in opposition to Claimant's advice. Thus, we agree with the Organization that Claimant's record should be cleared of the discipline and that he be compensated for all losses sustained as a result thereof.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.