

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26514

Docket Number TD-26348

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Norfolk and Western Railway Company

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

(a) The Norfolk and Western Railway Company (hereinafter referred to as the 'Company') violated Article 9 of the applicable schedule agreement when it suspended Train Dispatcher H. K. Volle from the service of the Company without pay for 30 days beginning 12:01 a.m., May 25, 1984 and ending at 12:00 midnight, June 23, 1984, such discipline being unmerited and unduly severe in light of the Appellant's past employment record.

(b) The Company shall now clear Appellant's record of the charge and compensate him for the wage loss suffered by him. "

OPINION OF BOARD: The relevant facts are not in dispute in this case. Moreover, the Claimant has acknowledged that he violated the Carrier's Rules when he issued an improper track car lineup to Assistant Roadmaster. Accordingly, the issue here is whether, under the facts of record and principles long applied by this Division, some lesser penalty would be more commensurate with the proven offense.

The seriousness of the Claimant's failure to properly perform his assigned duties is self-evident. However, the Board notes that the Carrier's Exhibits established that the Claimant has been disciplined only once before in a period of 34 years of service. Certainly, such a record indicates that the Claimant does not take his responsibility to the Carrier lightly.

In view of the foregoing factors and after noting the Claimant's 34 years of almost discipline-free service, the Board is of the Opinion that a lesser penalty is appropriate. Although we do not ordinarily alter discipline that was based on credible evidence of guilt, as herein, we find that a 15-day suspension would be more commensurate with the offense. The Claimant shall be made whole for the remaining 15-day penalty.

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

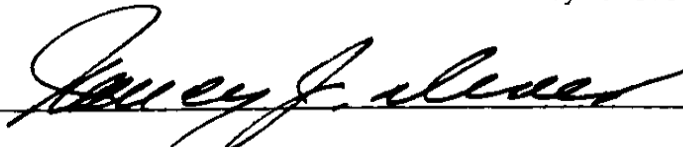
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.