

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26521
Docket Number TD-26716

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Seaboard System Railroad (former SCL)

STATEMENT OF CLAIM:

"It is this Organizations position that Mr. Jones record now be cleared of these [30] demerits and any reference to these charges and investigation be removed from his record."

OPINION OF BOARD: The Claimant is accused of having violated various Operating Rules of the Carrier when he failed to clear Train No. 171 on Friday, November 11, 1983, with Train Order No. 1078. The Investigation into this matter was held at Tampa, Florida on December 12, 1983, after which the Claimant was informed that he had been found guilty as charged. He was assessed thirty (30) demerits on his record.

The Claimant was found guilty of violating the following Operating Rules of the Carrier:

"Rule 211

Clearance card must be filled out by the operator before clearing a train, showing thereon, without erasure or alteration, the total number of train orders and the number of each train order, if any, addressed to the train. He will then repeat from clearance card to the dispatcher the information shown thereon. The dispatcher will make the required record, and if operator has correctly repeated the numbers of all train orders addressed to the train, will respond by giving 'OK,' the time and his initials, which the operator will endorse on the clearance card.

Rule 786

They must supervise the movement of trains, anticipate the need for train orders and have them ready when needed.

Rule 789

They will promptly take action to afford protection against any known condition which may affect the safe operation of trains and engines.

"Rule 790

Before being relieved, a train dispatcher must write in ink in the train order book a transfer of all orders not fully executed, listing them by numbers, all clearance cards issued to trains which have not departed, and all lineups in effect. He must know that the relieving train dispatcher fully understands all features pertaining thereto. The relieving train dispatcher must fully acquaint himself with all such matters, and the positions of trains, before undertaking his duties. Each must sign the transfer in the presence of the other."

The Claimant is an Extra Board Train Dispatcher with a seniority date of November 16, 1974. On the day when the Rule infractions allegedly took place he was working the third shift between 11:59 PM November 10, 1983 and 7:59 AM, November 11, 1983. Among the Train Orders which the Claimant had received when he assumed duty was No. 1078 which was addressed for delivery to all southbound trains at Sanford. Absent orders to the contrary, according to his testimony at the Investigation, the Claimant assumed that Train No. 171 (or the so-called Orange Blossom Special) would receive this Train Order at Sanford. During the Investigation the Chief Train Dispatcher testified that he had reissued written instructions to all Train Dispatchers that the southbound Orange Blossom Special was to be issued a clearance card at Moncrief effective on both the Sanford and the Lakeland subdivisions. The instant case, as Third Division Award No. 26520, which involved discipline issued to the Train Dispatcher working the shift prior to the Claimant for not having issued Train Order No. 1078, revolves around the same issue as was studied in that Award. That issue is whether the Chief Train Dispatcher did or did not issue instructions relative to extra trains 171 and 172 (north and southbound Orange Blossom Specials) in the fall of 1983 to Dispatchers after the train was reinaugurated in October of that year. After this run had been started in late 1982, and instructions issued to that effect, it had been abolished in June of 1983. Conclusions arrived at by the Board in Third Division Award No. 26520 are applicable here and are incorporated by reference. For all practical purposes the testimony proffered at the two Investigations involving these two different Claimants is parallel with exception of a different witness or two. The Board must conclude, as it did in Third Division Award 26520, that the Carrier has failed to meet its burden of proof and the Claim must be sustained in full.

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

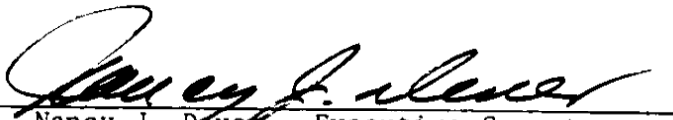
The Agreement was violated.

A W A R D

Claim sustained.

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.