

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26599
Docket Number TD-26124

Gil Vernon, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"Appeal from thirty (30) Demerits assessed personal record of B. L. Smetzer, Train Dispatcher, requesting that the thirty (30) Demerits be stricken from his record, and that he be exonerated of the charges."

OPINION OF BOARD: On July 11, 1983, the Carrier directed the following notice to the Claimant as well as crew members of Train 1124-G-1:

"Arrange to report to Trainmaster's Office, 1619-27th Street, Fort Madison, Iowa, 9:00 a.m., Thursday, July 21, 1983 with your representative and witness(es) if desired, for formal investigation to develop all facts and place responsibility, if any, in connection with possible violation of General Rule 'C', 'E', Rules 30, 129, 292, 303, 330(D), Rules Operating Department revised September, 1979, and Rule 2 and 64 of Instructions for Train Dispatchers effective January 5, 1975, concerning train 1124-G-1, Extra 3539 West allegedly passing controlled signal in stop position at GI and concerning alleged failure to properly report incident on Thursday, July 7, 1983."

Subsequent to the Investigation, the Carrier assessed the discipline on appeal before the Board.

The Rules cited in the Investigation notice relevant to this case are as follows:

"Rule C

Employees must know and obey the rules and special instructions. If in doubt as to their meaning they must ask their supervisors for an explanation.

Rule E

Employees must do everything in their power to see that the rules and special instructions are followed by all and they must promptly report any violations.

Rule 2

Any irregularity in the movement of trains, handling or execution of train orders, or compliance with Operating Rules, or any apparent misunderstanding of rules or instructions, must be immediately reported to the Chief Dispatcher.

Rule 64

When a signal indication is disregarded, a violation of signal rules occurs, or any irregularity in the signal system exists, a written report must be made at once to the Chief Dispatcher."

A review of the Transcript reveals that on the date in question Train 1124-G-1 passed a control signal in the stop position at 11:50 P.M. This is undisputed. It is also undisputed that the Claimant did not report this to the Assistant Chief Dispatcher (the Chief Dispatcher designee for the purposes of these rules and these circumstances) until 3:35 A.M.

What is disputed is whether the Claimant was aware or should have been aware of the incident at 11:50 P.M. and reported it at that time.

With respect to this question, the Board must conclude there is substantial evidence to support the Hearing Officer's finding. The record bears out the Claimant should have been aware of the incident at the time based on conversation with the engineer and based on the train graph. Additionally, it is clear this should have been immediately reported to the Assistant Chief Dispatcher. There is at least a tacit admission from the Claimant of this in the record.

Therefore, the discipline was not improper.

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

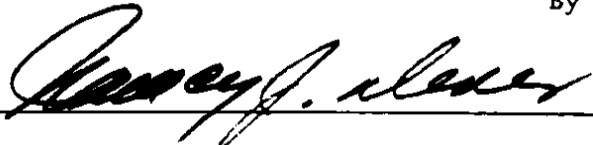
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.