

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: ((American Train Dispatchers' Association
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "[i]t is requested that Mr. J. L. Ceaser be returned to the service of the Burlington Northern Ry. Co. as a Train Dispatcher, properly trained, with all seniority rights and other benefits restored, all loss of wages be paid, and that his record be cleared of all charges."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was working as Train Dispatcher on duty on third trick June 13, 1984, when "lap orders" were issued to an eastbound and westbound train, operating in single track territory by train orders only. The trains collided head-on near Motley, Minnesota at about 1:00 a.m. on June 14, 1984. The accident resulted in three fatalities and millions of dollars in damages.

All involved employees, including Claimant, were given written notice on June 18, 1984, to attend a formal investigation on June 22, 1984, to ascertain facts and responsibility for the collision. That investigation was postponed until June 28, 1984, to allow one of the injured crew to recover from injuries. Subsequently, both the ATDA and UTU requested additional postponements which were granted. Written notices of postponement and rescheduling were issued setting the investigation for July 10, 1984. The hearing and investigation was conducted on July 10, 1984, but Claimant failed or refused to appear and the hearing was held in his absence.

Although Claimant and the Organization suggest that he was deprived of notice and opportunity to attend the hearing, the record evidence is to the

contrary. Persuasive evidence indicates that the notice of investigation, as well as all subsequent cancellations and rescheduling notices, were hand-delivered to Claimant's residence and signed for by his brother-in-law and/or wife. According to unrefuted testimony from Carrier's Chief Dispatcher, Claimant personally acknowledged receipt of the notices when he came to Carrier offices to pick up his paycheck. From all the available evidence we conclude that Claimant was aware of the hearing and investigation of July 10, 1984, but declined or refused to attend or participate in that hearing upon the advice of his attorney.

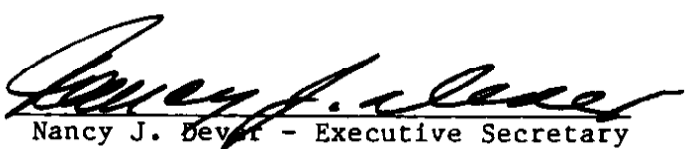
On the basis of evidence developed at the hearing Carrier concluded that Claimant had issued the fatal lap orders to the two trains, thus placing them on a collision course. Carrier found Claimant guilty of violating General Rule A, Rules S-88 and 990 of the Consolidated Code of Operating Rules, and Items No. 1E and 12D of the Train Dispatchers' Manual, for failing to provide train order protection for the trains resulting in head-on collision. Failure to call as witnesses Carrier officers who had no familiarity with the accident was not shown to be prejudicial to the fairness of the hearing. There is substantial record evidence to support Carrier's conclusion of Claimant's culpability. Even allowing for Claimant's relative inexperience, he had passed all training and qualification examinations and was ostensibly a fully qualified Train Dispatcher. In the circumstances, we cannot find that the discipline imposed by Carrier was unreasonable, arbitrary or capricious.

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 30th day of August 1988.