

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27596
Docket No. TD-27319
88-3-86-3-636

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"...we ask that the discipline assessed Mr. Zimmerman be remanded and any reference to this incident on his personal record be removed. Also, Mr. Zimmerman was required to be absent from duty November 3 and 4, 1985 to attend this investigation, and we ask that he be paid for time lost." [Carrier file TD-FTW-85-6]."

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 employes 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.

Following an Investigative Hearing, the Claimant, an Assistant Chief Train Dispatcher, received a notice of discipline as follows:

"Referring to formal investigation held on November 4, 1985; wherein you were charged with permitting the unrestricted movement of Train 4BC01 between Fort Wayne, Indiana and Sidney, Indiana, on October 17, 1985, when said train contained car TTPX 82605, bulkhead flat car, which is restricted to 45 MPH under Fort Wayne Division Timetable No. 3, Rule No. 4, effective Sunday, October 14, 1984.

For your responsibility in your not taking the initiative to prohibit the unrestricted movement of Car TTPX 82605 on October 14, 1985, you are hereby assessed thirty (30) days deferred suspension from the service of the Norfolk and Western Railway Company."

In the Board's view, there is no basis to interfere with the Carrier's assessment of discipline. During the course of his duty assignment and prior to the departure of the train, the Claimant became aware of information which would have restricted the train to a speed of 45 miles per hour. He also had the means to confirm further this information, given to him by the Train Dispatcher on duty with him. The Claimant did discuss the matter with the Yardmaster by telephone, but he failed to follow through to implement advice to the train as to the speed restriction. (The train proceeded on its trip, reaching unrestricted speeds of up to 60 miles per hour.)

Rules applicable to Train Dispatchers are sufficiently precise to have required the Claimant to initiate action to insure that the train would operate at the required restricted speed.

As pointed out by the Organization, others were guilty of improper conduct and/or failure to comply with applicable rules. This, however, in no way vitiates the Claimant's responsibility. The Claimant simply stopped short of exercising the full extent of his authority.

As a procedural matter, the Organization suggests that the Hearing was improper in that it was conducted by a Superintendent other than the one directly in line of authority over the Claimant. Article 9 (b) provides that the Hearing shall be granted "before the Superintendent."

The Carrier determined that "the" Superintendent was required to appear as a witness to give testimony at the Hearing. The Carrier therefore selected another Superintendent to conduct the Hearing. Since a Hearing Officer may not give testimony at a Hearing he conducts, it is the Board's view that the Carrier took the proper course of action. Further, review of the record shows that the Hearing was conducted in a fair and thorough fashion and the principals involved had full opportunity to have their versions of the incident fully presented.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.

LABOR MEMBER'S DISSENT
TO
Award 27596 - Docket TD-27319
(Referee Marx)

This Award is an example of palpable error, in its most favorable light.

Appellant Train Dispatcher was charged with permitting the unrestricted movement of a train containing a restricted car.

The Board's Majority mistakenly found, in part:

"Rules applicable to Train Dispatchers are sufficiently precise to have required the Claimant to initiate action to insure that the train would operate at the required restricted speed."

The Award points to no such rules and there are none.

Carrier's rules require the crews to know the consist of their trains, and to observe applicable speed restrictions when restricted cars are in their trains.

Rule 583

"The Conductor must inform the Engineer of equipment or cars that restrict movement of the train or require special handling."

This rule obviously places sole responsibility on the Conductor to inform his Engineer of equipment restricting the movement of their train or requiring special handling. There is no requirement placed on Assistant Chief Train Dispatchers by this rule.

Rule 109

"A train or engine must not be run faster than the maximum speed authorized in the timetable. Speed restrictions shown in timetables, bulletins, by speed limit signs or by any other method must be observed. Engines in service or in tow, with or without cars, must not exceed the maximum speed authorized for the unit having the lowest authorized speed."

This rule applies to crews operating trains and engines, requiring their observance of applicable speed restrictions. There is no evidence of applicability to Assistant Chief Train Dispatchers.

Rule 532

"Train dispatchers must issue instructions clearly so as not to be misunderstood. They must take the initiative to see that trains are moved safely, must anticipate dangerous conditions, and must not issue unsafe combinations of train orders."

Labor Member's Dissent to Award 27596, continued

Rule 532 is the only rule applicable to Train Dispatchers which was cited in the record. There is no evidence that Appellant was required to take any initiative in this case. The other cited rules require crews, not Train Dispatchers, to take the initiative, as part of their responsibilities.

The record is totally void of any evidence that Appellant was required by the rules, or even past practice, to notify the crew that a restricted car was in their train.

The Award, being based on this erroneous finding, exceeds the jurisdiction of the Board, and is therefore invalid.

I dissent.

A handwritten signature in dark ink, appearing to read 'R. J. Irvin', with a stylized flourish at the end.

R. J. Irvin
Labor Member

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT
TO
AWARD 27596, DOCKET TD-27319
(Referee Marx)

The Labor Member's Dissent contains the same argument and Rule Citations as made before the Board by the Organization and the Labor Member, and seeks to transfer the responsibility of Claimant, an Assistant Chief Train Dispatcher to the Train Crew, Yard Master and Yard Clerk. Although the Yard Master and the Clerical Employee were both charged and assessed discipline for their negligence, it certainly did not relieve the Claimant Assistant Chief Train Dispatcher of his responsibilities under Carrier's Operating Rules 531 and 532 reading:

"Rule 531

Train dispatchers will issue orders governing the movement of trains, and will see that the orders are transmitted, recorded, and repeated according to prescribed forms and rules. They will record the movement of trains. They will note on the train sheet important incidents occurring during their tours of duty and will make the various other records required.

Rule 532

Train dispatchers must issue instructions clearly so as not to be misunderstood. They must take the initiative to see that trains are moved safely, must anticipate dangerous conditions, and must not issue unsafe combinations of train orders." (Emphasis added)

The record of handling on the property which was submitted to this Board, reveals that Carrier stated to the Organization:

"There is no dispute that claimant put the yardmaster on notice that there might be a restricted car in TR BC-01; however, he did not instruct the yardmaster to make a physical check of the train (354Q); nor did he contact a clerical employee to check the inbound wheel report which indicated that TTPX 82605 was a bulkhead flat (363Q). Claimant is responsible for the movement of trains on the Ft. Wayne Division, including supervision of forces involved therewith. Claimant in the performance of his duties is required to take the initiative to see that trains are moved safely. This he failed to do."

and,

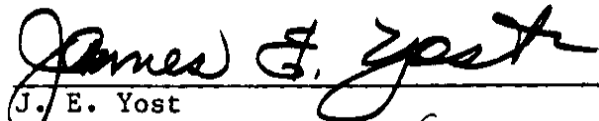
"Claimant has the responsibility as a train dispatcher to see that trains move safely. In this regard, Operating Rule 532 reads in part: 'They [train dispatchers] must take the initiative to see that trains are moved safely, must anticipate dangerous conditions, and must not issue unsafe combinations of train orders.' While the yardmaster was negligent, the record shows claimant was also responsible (sic) for the improper movement of the restricted car and must assume his share of responsibility. Therefore the discipline was not arbitrary and capricious."

But the Organization did not refute Carrier's statements.

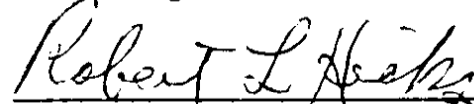
Accordingly, the Majority's findings in Award 27596 reading:


"Rules applicable to Train Dispatchers are sufficiently precise to have required the Claimant to initiate action to insure that the train would operate at the required restricted speed."

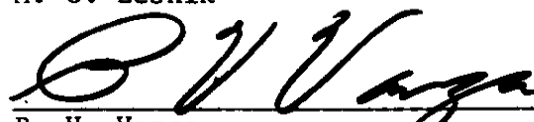
are well founded. The Award is valid.


J. E. Yost


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga