

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28017  
Docket No. TD-28192  
89-3-87-3-872

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(CSX Transportation, Inc.  
(former Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"Appeal of dismissal from service of Train Dispatcher B. L. Carter as a result of investigation held Tuesday, August 26, 1986."

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 employes 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.

The basic facts in this case are set forth as follows: An investigation was held on August 26, 1986, to determine Claimant's responsibility in connection with his failure to deliver Train Order No. 3131 to Extra 3747-6676 East at Russell, Kentucky at or about 3:18 AM on August 15, 1986 and for issuing a work authority under Operating Rule 707(f) without knowing that all trains which could be affected had a copy of the Form "X" Train Order No. 3131. Based on the investigation, Claimant was found at fault for the above actions and was notified by letter, dated September 3, 1986 that the discipline assessed would be dismissal from service. This disposition was promptly appealed.

In defense of his petition, Claimant did not dispute the investigative findings per se; he did contend, however, that unsafe operating conditions or practices at RE Cabin previously contributed to accidents. Further, he asserted that while these conditions existed, six (6) other employees charged with similar offenses were assessed with either 20- or 30- day overhead suspensions. In effect, Claimant maintained, that while he was at fault on August 15, 1986, the discipline imposed was indeed excessive, and inconsistent with the discipline assessed other employees. He also noted that the error was discovered before the train entered the limits of the work authority in the vicinity of Bridge 271.

Carrier pointed out that in view of the investigative finding establishing guilt, the seriousness of his negligence, and his past disciplinary record, which included a recent 45 days suspension for his failure to deliver a train order to Extra 4015-3885 West on January 21, 1986, the discipline imposed was neither unreasonable nor punitive. In addition, it contended that it was unaware of any problems at RE Cabin other than an occasional complaint by clerical employees regarding workload.

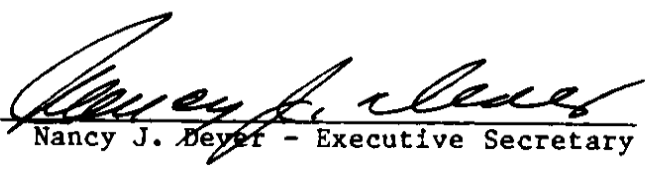
In considering this case we concur with Carrier's disciplinary determination. The evidence contained in the investigative transcript fully supported the asserted charges and thus Claimant's culpability was clearly established. Moreover, from the record, while there were assertions of unsafe practices at RE Cabin, we have no clear cut evidence establishing a direct nexus between these conditions and the events on August 15, 1986. Claimant's contention is a presumption and not proof. On the other hand, there is surface merit to Claimant's averment that Carrier observed a disparate disciplinary policy with respect to other employees found guilty of similar offenses, but we have not evidence regarding their prior employment records. In other words, were they previously disciplined for the same offense? In Claimant's case, the record shows that he was assessed a 10 days overhead suspension on September 7, 1984 for failure to deliver Train Order No. 316 to Extra 3831 West and then the 45 days noted above. He was also assessed several suspensions for failure to report for duty. Accordingly, and given this dismal record we have no basis for modifying the instant discipline, since his negligent actions were profoundly serious and the penalty assessed was consistent with the normative principles of progressive discipline.

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 31st day of July 1989.