

NATIONAL RAILROAD ADJUSTMENT BOARDS
THIRD DIVISIONAward No. 28657
Docket No. TD-28910
91-3-89-3-275

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Southern Railway Company

STATEMENT OF CLAIM:

"Appeal of the suspension of Train Dispatcher R. A. Adcock from May 28 to June 18, 1988. Carrier file TD-120."

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 were given due notice of hearing thereon.

A number of procedural questions and arguments had been raised during the processing of this dispute. At the Hearing before the Referee, both parties waived all procedural contentions in this docket, and we will dispose of the matter solely on the merits.

On May 27, 1988, Train Q15-U8 passed a "stop signal" at Hogan M.P. 73.2. On June 3, 1988, the Claimant (East End Dispatcher) and the four crew members were notified of an Investigation concerning the incident, and Claimant was also charged with a violation of Operating Rule 440 as well as failure to report the incident.

Subsequent to the Investigation, Claimant was notified that he was properly suspended from May 28, 1988, through and including June 18, 1988.

Carrier argues that Claimant did not properly line signals to a clear position which resulted in the train passing the "stop" signal. Further, Carrier asserts that subsequent tests made to the signals showed that they were functioning properly and they showed a "stop" position at all times and never called for "clear."

As a result, the Carrier found a degree of responsibility plus a violation of Rule 440 which requires that signals should be cleared in advance of trains to avoid restrictive indications when possible.

There is an intermediate signal at Mile Post 71.2 which gives an advance indication of the next controlled signal (Hogan 73.2). The Engineer testified that he observed a "clear" signal at M.P. 71.2 and thus continued at normal track speed of 45 miles per hour. However, when he first saw the Hogan 73.2 signal it was red. Trainman Parsons also observed a clear signal at M.P. 71.2. He called it out and the Conductor repeated it. Trainman Messer confirmed that the approach signal at M.P. 71.2 was "clear" but the Hogan signal was red. The Conductor did not see the approach signal but heard the Trainman call it "clear."

This Board does not substitute its judgment for the Carrier's, but we do assure that a Carrier satisfies its burden of proof. Surely the technology of tests of equipment must be given due consideration. At the same time, the Claimant's testimony is confirmed by 4 live witnesses. It may be, as contended by the Carrier, that the crew members' testimony should be viewed with caution, since they were also charged parties. Nonetheless, absent some more specific showing, we are not prepared to disregard it in total for that reason.


Based solely upon the question of burden of proof, we do not find substantive evidence of culpability under Rule 440 or a failure to report the incident as it was known to Claimant.

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 29th day of January 1991.