

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29409
Docket No. TD-29604
92-3-90-3-579

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"#1 - 10 DAYS SUSPENSION - NEC-ATDA-SD-133D

Appeal of 10 days suspension assessed Train Dispatcher W. W. Prettyman,
10/6/89

"#2 - 10 DAYS SUSPENSION - NEC-ATDA-SD-143D

Appeal of 10 days suspension assessed Train Dispatcher W. W. Prettyman,
6/14/90"

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.

The present case encompasses two separate claims on behalf of the Claimant for removal of two ten-day suspensions assessed, respectively, on October 6, 1989, and on June 14, 1990. On September 13, 1989, Claimant was notified to attend an Investigation in connection with the following charges:

"Violation first paragraph NORAC Rule T, which reads, 'Employees must report for duty at required time,' in that you were absent from duty as a Train Dispatcher on August 22, 23, 24, 25, 26, 29, 1989, which in light of your previous attendance record constitutes excessive absenteeism."

Following the Hearing, Claimant was informed that he had been assessed ten days suspension. The discipline was appealed by the Organization on October 29, 1989. Following discussion of this case on November 10, 1989, the Director-Labor Relations reduced the discipline to a reprimand in a letter dated November 22, 1989. The Organization continued the appeal on December 29, 1989, and it is properly before the Board for resolution.

It is the position of the Organization that Carrier's assessment of any discipline was inappropriate in the circumstances because Claimant's absences were legitimately connected to his chronic back problem. Accordingly, even reduction of the original discipline assessed to a reprimand is excessive and unwarranted.

The Carrier maintains that a distinction must be made between normal absences due to illness or injury and those absences which, by their frequency and duration, suggest a lack of desire or ability by an individual to perform faithful service and are disruptive to the Carrier's operations.

In light of Carrier's legitimate requirement that it be able to rely on employees' regular attendance at work, and in view of Claimant's considerable absenteeism, this Board does not find that Carrier acted excessively or arbitrarily by imposing discipline for Claimant's extended absence (Second Division Awards 10673, 10435, 8564). Accordingly, we see no reason to disturb Carrier's assessment of a reprimand.

On May 14, 1990, the Transportation Manager issued Claimant a notice to attend an Investigation concerning:

"Violation applicable portion first paragraph Rule 902 of the NORAC operating Rules which reads in part, 'Train Dispatchers are in charge of the movement of Trains and have supervision over employees connected with those trains. They will issue authorities for movement and such other instructions as may be required in accordance with these rules for the safe and efficient movement of trains....', in that while assigned as Section A Train Dispatcher from 3:59 P.M. to 11:59 P.M. on Wednesday, May 2, 1990 you failed to issue necessary instructions to the Block Operator at North Philadelphia Block and Interlocking Station which would have prevented Passenger Train No. 124 from following (at 7:47 P.M.) Freight Train ALCA2 on No. 2 Track from North Philadelphia Interlocking resulting in an eight (8) minute delay to No. 124 between North Philadelphia and Shore Interlockings."

An Investigation was held on June 5, 1990. On June 14, 1990, Claimant was notified that he was assessed a ten day suspension. That discipline was appealed and subsequently processed up to and including the highest Carrier officer designated to handle such matters. Accordingly, it is properly before this Board for adjudication.

The Organization maintains that Carrier has not met its burden of proof in this case. It asserts that evidence on the record indicates that it is not normal procedure for the Train Dispatcher to issue instruction to the Block Operator at North Philadelphia for every train movement. Further, the Organization notes that Claimant testified that he had an "unwritten standard operating procedure" with the Block Operator at North Philadelphia, to hold "follow" movements until instructed to do otherwise. It argues that Passenger Train 124 was allowed to follow Freight Train ALCA2 because the Block Operator did not follow this "standard operating procedure," even though the Block Operator knew that previous Passenger Train No. 148 had been routed on #1 Track to avoid being delayed behind ALCA2.

For its part, Carrier points out that the unrefuted testimony of the Chief Train Dispatcher established that Track 2 is the normal route for Train No. 124 between Zoo and Shore Interlockings. Therefore, no special permission is required from the Train Dispatcher to operate that route. In order to operate other than this normal route, however, the Train Dispatcher would have to issue appropriate instructions to the Operators at Zoo and North Philadelphia Interlockings.

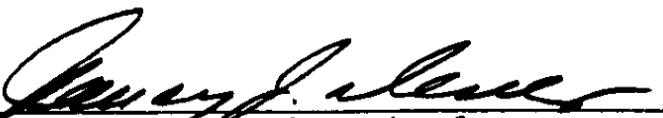
A careful review of the record before the Board reveals predictably conflicting testimony on where culpability for the eight minute delay of Train No. 124 is to be placed. On balance, however, the preponderance of the evidence before us suggests that Claimant was, in fact, remiss in not informing the North Philadelphia Block Operator of the need to hold behind the freight train on No. 2 Track. While Carrier's assessment of a ten day suspension (held in abeyance) may seem severe, it is neither unreasonable nor arbitrary. Accordingly, the Board will not substitute its judgment for Carrier's regarding quantum of discipline in this case.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.