

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29967
Docket No. TD-30032
93-3-91-3-444

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"APPEAL OF THE DISMISSAL OF TRAIN DISPATCHER H. F.
MONTINE, 1/24, 1991"

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 employe 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 an employee with some thirty-eight (38) years of service, sixteen (16) years as a Train Dispatcher, when on November 4, 1990, while working as a Train Dispatcher, routed a train which contained extra dimensional cars over a track which had height restrictions placed on it by a General Order which had been in effect since at least January 1, 1990. As a result of this routing, the high car sustained damage and had to be placed in Carrier's repair shop.

By notice dated November 6, 1990, Claimant was instructed to attend an investigation scheduled for November 9, 1990, to develop facts and determine responsibility for this action. By agreement of the parties, the investigation was postponed to and held on December 11, 1990, at which time Claimant was present, represented and testified on his own behalf. Subsequently, by notice dated January 24, 1991, Claimant was notified that he had been found at fault for the damage to the car in question and he was dismissed from Carrier's service. Because the parties were unable to resolve

their differences during the on-property handling of this dispute, it has come to this Board for final and binding adjudication.

The hearing transcript which was developed during the on-property handling of this case, contains substantial evidence to support the conclusion that Claimant had knowledge of the movement of the excessive dimension car and had an alternate track with adequate clearance which could have been used for the train movement. The fact that others involved in the train movement such as the train and engine crews who were operating the train may also have shared some responsibility for the damage to the car in question does not negate or mitigate Claimant's primary responsibility for the proper performance of his duties.

It is argued that dismissal from service for this type of offense is excessive and a violation of the agreement protecting employees from arbitrary and capricious action by the Carrier. Unfortunately for Claimant, the case file reveals that Claimant's prior discipline record was considerably less than exemplary and, in fact, included a prior 90-day suspension which occurred in April, 1990, involving a very similar type of dereliction. On the basis of the proven offense in this instance coupled with the previous violations, this Board cannot say that the discipline as assessed was excessive, arbitrary or capricious. We will deny the request for removal of the dismissal.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.