

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36313
Docket No. TD-36528
02-3-01-3-17

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(American Train Dispatchers Department
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as ‘the Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as ‘the Organization’), including but not limited to Article 24(b) in particular when on March 10 2000, [sic] the Carrier arbitrarily censured train dispatcher R. D. Vierkant, without cause and absent any rules violation. The Carrier shall now overturn the previous decision to censure the aggrieved and shall clear the record of aggrieved, removing the censure from his record and restoring his record to its state prior to the Carrier’s March 10 decision.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Pursuant to written notice dated February 11, 2000, the Carrier charged the Claimant, a Train Dispatcher, with being culpable for a train running through a crossover switch at the Robinson Spur on February 7, 2000. The Investigation was held on February 22 and by letter dated March 10, 2000, the Carrier informed the Claimant that it was placing an entry of censure on his personal record.

Initially, the Organization charges that the Carrier deprived the Claimant of his contractual due process rights because the same Carrier Official brought the charges, presided over the Hearing and assessed the discipline. The Board carefully reviewed the transcript of Investigation and we conclude that the Carrier Official's multiple roles did not prejudice the Claimant. The Claimant and his representative mounted a vigorous, albeit, unsuccessful defense. A perusal of the record demonstrates that the Hearing Officer permitted the Claimant to present evidence in his favor, which means that the Carrier did not prevent the Claimant from submitting exculpatory evidence.

The following facts were adduced at the Investigation.

At about 3:00 P.M. on February 7, 2000, a westbound train traversing Main Track 2 ran through the crossover switch at Robinson Spur. A Switch Tender was on duty. The record does not reflect if there was any damage to the switch.

On February 7, the Claimant was the first trick LaCrosse District Dispatcher. He was in charge of train movements over and through the Robinson Spur area which was double track territory. The following colloquy occurred between the Claimant and the Robinson Spur Switch Tender at 2:13 P.M.:

"Dispatcher: All right, over.

Switch Tender: Yes, dispatcher, this is the switch tender at Robinson Spur, first thing is, is, how many trains are we gonna be running westbound through the crossover's, and second thing is, I'm kinda curious if I can get a van dispatched from Savanna to Robinson Spur, my handheld, I'm having a hard time hearing you, and I can't communicate to you with it, over.

Dispatcher: Well, there are two westbound's out there right now, and that's how many more are coming. And I'll let the assistant chief know what you request, over.

Switch Tender: Roger. So you want, I'm gonna align the crossovers for two westbounds, and then line them back for the main, is that correct, over?

Dispatcher: That's correct, over.

Switch Tender: Thank you very much, switch tender out."

While the record is not entirely clear, the westbound train apparently did not utilize the crossover and thus, the crossover switch was not aligned for the train's continuous movement on Main Track 2. At the time that the train ran through the switch, the Claimant was off duty. The relieving Train Dispatcher issued the track warrant for the train to proceed through the crossover at Robinson Spur.

The Claimant testified that, in the above quoted conversation, he was merely giving the Switch Tender general information about train locations. The Claimant denied that he instructed the Switch Tender to align the Robinson Spur switches for crossover especially because he did not tell the Switch Tender which track the westbound trains would be traversing. Moreover, the Claimant asserted that the Switch Tender should not have aligned the switches until the train arrived at Robinson Spur. The Claimant intimated that changes can occur before issuance of the track warrant. The Claimant and another Dispatcher declared that Dispatchers do not generally direct the activities of Switch Tenders. Rather, once a warrant is issued, the train crew tells the Switch Tender to align the switches in accord with the authority. The Claimant also speculated that, perhaps, the Switch Tender misunderstood his remarks as instructions as opposed to general information. The Claimant explained that at the time that he spoke to the Switch Tender, the train movement plans were still uncertain due to the presence of a nearby work train.

The Chief Dispatcher testified that he examined the transfer sheet and observed that the Claimant did not make any notation about the Robinson Spur crossover switches being reversed. The Claimant asserted that he told the relieving Dispatcher that a Switch Tender was at Robinson Spur, but the Claimant was vague about exactly

what information he conveyed to the Relieving Dispatcher about the status of the switches. The Chief Dispatcher declared that the Claimant should have informed the relieving Dispatcher about any unsafe condition including the Claimant's earlier conversation with the Switch Tender.

After carefully reviewing the record as a whole, the Board finds that the Carrier submitted substantial evidence that the Claimant was, at least, partially culpable for the westbound train running through the crossover switch at Robinson Spur on February 7, 2000.

The most compelling evidence is the transcript of the conversation between the Claimant and the Switch Tender at 2:13 P.M. The transcript clearly reveals that, at first, the Claimant conveyed general information to the Switch Tender regarding the number of westbound trains running through Robinson Spur. Next, the Switch Tender changed the substance and the tenor of the conversation from a discussion about general information to a detailed communication. By informing the Claimant how he intended to align the crossover switch, the Switch Tender was seeking direction from the Claimant. In essence, the Switch Tender placed the onus on the Claimant to either confirm or disaffirm what action the Switch Tender was taking. The Claimant responded with an emphatic, "That's correct. . . ." The Claimant's response can only be construed as a confirmation of what the Switch Tender intended to do. The Claimant's confirmation constituted a directive to the Switch Tender. Stated differently, the Switch Tender would logically deduce that the Claimant unequivocally approved how the Switch Tender intended to align the switch.

The Claimant knew that the exact tracks on which the westbound trains would run was still in flux. Instead of saying, "That's correct," the Claimant should have said something to the effect that this was the current plan but it is subject to changes. Alternatively, the Claimant could have told the Switch Tender to wait for the track warrants. The Claimant aggravated his error by failing to precisely inform the relieving Dispatcher of how the Switch Tender was aligning the switch. If the Claimant had written the proper notation on the transfer sheet, the relieving Dispatcher could have informed the Switch Tender of changes in the train movement plan. The Claimant never adequately explained why he did not note the switch alignment on the transfer sheet. Communication between Dispatchers is vital to operating a safe railroad.

By affirming the Switch Tender's actions, which was the equivalent to giving him instructions, and by failing to note the substance of the conversation on the transfer sheet, the Claimant committed successive lapses of good judgment. The Claimant seeks to place all of the blame on the Switch Tender. It may be that the Switch Tender was also negligent but his negligence, if any, does not exonerate the Claimant. In sum, the Claimant's negligence was a contributing cause of the train running through the switch.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 2002.