

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 44461
Docket No. 45529
21-3-NRAB-00003-190442

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“The burden of proof has not been met by the Carrier. Without proving that the train experienced a delay or that it was not handled efficiently, the Carrier did not show that Mr. Stewart violated CSX Operating Rule 600.3.

For the reasons contained herein, the Organization requests that the Claimant's record be expunged of this incident and that he be paid for all time lost, including investigation.”

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.

The Claimant, M.D. Stewart, has been employed by the Carrier since 1998. At the relevant time, he was working as a train dispatcher at the Carrier's Jacksonville,

Florida Network Operations Center. On December 26, 2018, following an investigation, the Carrier found the Claimant guilty of failing, on November 16, 2018, to secure a re-crew for a train in a timely manner, resulting in an unnecessary train delay. The Carrier found that he had violated Operating Rule 600.3 and assessed him a one-day suspension. The applicable Rule provides:

Train dispatchers and assistant chief train dispatchers are accountable for the following:

- 1. Directing the movement of trains and on-track equipment in a safe and efficient manner in accordance with rules and special instructions.**

This case involves train G21714 which, on the day at issue, was operating between Nashville, Tennessee and Birmingham, Alabama. It originated on territory controlled by the “SC” dispatching console; the Claimant was working the “SE” dispatching console, which controlled part of the territory the train would operate over, between Brentwood and New Castle.

The train’s crew was on duty at 12:30 PM at Birmingham, and then deadheaded to Nashville to pick up the train. Nashville to Birmingham is at least a six-hour run. Therefore, when, for various reasons, the train left the Nashville yard at 7:34 PM, the crew had only five hours before their hours of service would expire. It was therefore clear that they could not get to the Birmingham crew change point without a re-crew. However, no re-crew was requested at this point.

Nashville was not on the territory controlled by the Claimant. The train entered his territory when it passed Brentwood at 7:47 PM.

Jackson Thomas Polivick, Network Operations Manager, testified at the investigation that it was the dispatcher’s responsibility to inform the assistant chief dispatcher of the need for another crew, and the Claimant failed to take this action in a timely manner. He stated that when the train left Nashville it was becoming his responsibility to monitor it and ensure it had time to complete its trip.

Mr. Polivick stated that he spoke to the assistant chief dispatcher on duty at the time of the incident, and the one who relieved him, but neither testified at the

investigation. He testified that the assistant chief dispatcher's first knowledge was the Claimant telling him that the train wasn't going to make it. The assistant chief dispatchers told him that the Claimant's late notification was the reason for the train's delay. He also stated that it was the Claimant's responsibility to monitor the train and, and, apparently, order the re-crew before it came onto his territory.

There was no explanation for the fact that no re-crew had been requested before the train left Nashville, as it had been apparent for some that one would be needed. Mr. Polivick acknowledged that he did not interview the SC dispatcher or the Claimant following the incident.

The Claimant testified at the hearing that the re-crew should have been requested long before the train came onto his territory. Once it became apparent this had not occurred, he notified the assistant chief dispatcher as soon as possible and made the necessary arrangements.

He explained that if a train is sitting or has some kind of problem, he would not know that unless the dispatcher controlling the train tells him about it. That did not happen here.

The Carrier assigned sole responsibility for this incident to the Claimant, who did request a re-crew, as soon, he maintained, as he became aware of the problem. No one else did. There was no exploration of the possible role of the SC dispatcher, who had to know of the problem long before the Claimant did, or of why the assistant chief dispatcher was apparently unaware of the situation until the Claimant told him about it.

While this train experienced significant delay, the Carrier has not demonstrated that responsibility was properly assigned to the Claimant. The Carrier has not met its burden of proving his guilt by substantial evidence.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of June 2021.