

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44804
Docket No. TD-46632
23-3-NRAB-00003-210612**

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

**(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Louisville & Indiana Railroad Company**

STATEMENT OF CLAIM:

“The Carrier has failed to meet the burden of proof necessary in order to demonstrate a violation. The Discipline assessed against the Claimant was clearly arbitrary, capricious, and unjustifiable. Therefore, the Carrier must now overturn the imposed discipline, remove any reference to this alleged incident from the Claimant’s service record, and compensate him for all lost time and benefit opportunities, including any time lost as a result of his attendance at the investigation on September 30, 2020.”

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 began his service with the Carrier on April 2, 2012. On June 30, 2020, the Claimant was working as the Carrier’s second shift dispatcher at its Jeffersonville, Indiana Train Dispatcher Office. The Claimant informed the crew of train Z550, which was operating northbound over the Carrier’s main line, that there

were two northbound trains ahead of them. The Claimant told the crew that one of the trains would be turning off the main line and train Q688 would continue on to Indianapolis.

Afterward, the Claimant directed train Q688 into a siding without informing the Z550 crew. The Q688 stopped on a curve and when the Z550 crew unexpectedly came upon the Q688, they incorrectly perceived that the Q688 was stopped directly in front of them on the main line. Both crew members made a split second decision to jump from the Z550 currently moving at 47 mph. The conductor jumped and sustained serious injury. The engineer placed the train in emergency and proceeded to follow the conductor. However, because of the slight delay, he was able to see that the Q688 was actually on a siding track, not the main line, and did not jump.

On July 7, 2020, the Claimant was given notice of an investigation in connection with the following charge:

This Formal Investigation is being held to ascertain the facts and determine your responsibility, if any, in connection with allegedly failing to provide sufficient information to the C31A-30 to allow safe operation of their train at or near Underwood Siding, that led to an emergency application of the brakes and one crew member jumping from the train and sustaining injuries while working as the Second Shift Dispatcher at or around 1650 on June 30, 2020 in Jeffersonville, IN.

Investigation of this incident will involve but not limited to the following rules and/or policies:

Operating Rule 100 - Application of Rules and Special Instruction

Operating Rule 600 - General Train Dispatcher Rules; including without limitation 600.3 and 600.4.

After a formal investigation on September 30, 2020, the Claimant was found in violation of Chapter 6-Train Dispatching, section 600.4, of the Carrier's Operating Rules and Transportation Safety Rulebook Section 1-Core Safety Rules-Rights and Responsibilities, and was assessed a 5-day deferred suspension.

In a letter dated November 19, 2020, the Organization appealed the Carrier's discipline. The Carrier responded to and denied the appeal in a letter dated January 15, 2021. Following discussion of this dispute in conference, the positions of the parties

remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that it has presented substantial evidence establishing that the Claimant failed to notify the Z550 crew of a planned meet with the Q688 at the Underwood siding, as required by the Carrier's rules. As a result, the engineer initiated an unnecessary emergency brake application that stopped the Z550 and the conductor jumped from a moving train. The Carrier contends that there is no dispute as to what occurred before the trains met.

The Carrier contends that the Claimant violated Rule 600.4 by failing to communicate in advance the location of the projected meet with the Q688 to the crew of the Z550. In addition, the Carrier contends that the Claimant should have conducted a job briefing about the change from his prior instruction that the Q688 would be "continuing to Indy."

The Carrier contends that the parties have used "meet" and "pass" interchangeably and that the language of Rule 600.4 is illustrative, not exhaustive. The Carrier contends that the Claimant admitted that he intended for the trains to "meet" at the siding. In any case, the Carrier contends that the presence of the Q688 in the siding demonstrably did "affect the handling" of the Z550.

The Carrier contends that its decision to assess a five-day deferred suspension was reasonable and was not excessive in light of the seriousness of this offense.

The Organization contends that the Carrier has failed to meet its burden of proving that the Claimant violated the rules as charged. The Organization contends that at the location of the incident, the Z550 was authorized to move on the main track, so there was no reason to conclude that another train was on the same track.

The Organization contends that there was no need for the Claimant to notify the crew of Train Z550 that the Q688 had been instructed to take the siding at Underwood. The Organization contends that the Claimant was not responsible for the crew's incorrect assumption that the Q688 was on the main track despite their exclusive authority to occupy the track.

The Organization contends that Rule 600.4 does not require a dispatcher to notify a train crew of train "passes" but rather train "meets" and other information that would affect the handling of their train. The Z550 was not meeting a train, but passing a train going in the same direction, which was clear of the main track. The

Organization contends that “meet” and “pass” are not synonymous. The Organization contends that in its report, “Understanding How Train Dispatchers Manage and Control Trains” the FRA defined the terms:

In routing trains, a main concern is to ensure that meets and passes occur efficiently. Meets are when two trains are coming in opposite directions on the same track. It is important to make sure that trains meet at a location where one train can be placed out of the way (e.g., at a station, on a second track, or at a siding) while the other goes through. Passes are when a faster train is coming upon a slower train and needs to pass. Again it is important to make sure that passes occur at a location where the slower train can be moved off the main track or onto a clear adjacent main track to allow the faster train to pass.¹

Rule 600.4, provides,
Train dispatchers must:

6. Communicate, in advance, information and instructions to train crews that will affect the handling of their train. Information such as: the location of projected meets and number of trains to be met, duration of expected delays and any additional routing information...

Core Safety Rule 1, Rights and Responsibilities, requires a job briefing “when work activity or work conditions change,” and to ensure that “Co-workers are warned of known hazards.”

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier’s judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

Here, there is no question that the Claimant did not inform the Z550 crew that it would come upon the Q688 in the siding as it traveled the main track. Initially, he agreed that he intended for them to “meet” but at the Investigation, he denied stating that he understood that they would meet. However, the Organization has conceded that the Claimant knew that the Z550 would pass the Q688.

¹ Internal footnotes omitted.

The Organization's case is essentially one of splitting hairs: whether the encounter is defined as a "pass" or a "meet" but the cited Rule is clearly intended to be read broadly. It requires dispatchers to communicate in advance information that would affect handling of trains. The rule gives examples what must be communicated and then ends, "and any additional routing information." While the Organization argues that the rule only addresses meets, and not passes, the clear intent of the rule is for dispatchers to communicate to train crews any information which will affect their train handling. The Organization cites to the rule of contract interpretation often referred to in its Latin form, "*expressio unius est exclusion alterius*" meaning the express inclusion of one thing is meant to exclude all others. But the Rule at issue makes clear that no such restriction was intended, as it expressly states that it only lists examples of what must be communicated.

The Claimant knew that he had told the Z550 crew that the Q688 was ahead of them on its way to Indianapolis but failed to inform them when he stopped the Q688 on the siding. The Carrier's conclusion that this information would also affect train handling is not unreasonable. The Claimant may not have been able to predict that the crew would misjudge the Q688's position, but he knew that the Z550 did not have the entire picture as it traveled up the main track. Safety is paramount in the industry and the dispatcher is responsible for sharing pertinent information with the crews.

On the record before us, it is impossible to find a bright line distinction between "meet" and "pass." There were numerous instances where the terms were used interchangeably. But even if there was such a distinction, it makes no sense that a train crew should be informed if it will "meet" a train in the siding coming from the opposite direction but doesn't need to be informed that it will "pass" a train in the siding which is traveling in the same direction. In either case, the moving train will have track authority, and the stationery train will be in the siding. The Carrier's rule makes clear that this is the sort of information that will affect the train handling and must be communicated.

As for the level of discipline imposed, the Carrier determined that the Claimant should be assessed a five-day deferred suspension. The central role of a dispatcher is to provide for the efficient movement of trains, and the Claimant failed to fulfil that role, causing serious injury to the conductor and a train to be put into emergency. We cannot say that the penalty was arbitrary or capricious.

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 28th day of October 2022.