



Award No. 17145
Docket No. TD-17618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

- (a) The Northern Pacific Railway Company, (hereinafter referred to as "the Carrier"), violated the existing schedule Agreement between the parties, Rule 28 thereof in particular, by its action in suspending Train Dispatcher G. J. Longbottom from service for fifteen (15) days, following hearing held April 24-25, 1967.
- (b) The Carrier shall now be required to compensate Claimant Longbottom for wage loss sustained and clear his record of the charge which provided the basis for the said hearing.

OPINION OF BOARD: The Claimant herein was in the status of an extra train dispatcher. On July 21, 1966, he filled the position of trick train dispatcher at Spokane, Washington, hours 7:00 A.M. to 3:00 P.M., Monday through Friday.

At approximately 11:20 A.M., July 21, 1966, Extra 2500 West and Extra 303 East collided between Spokane and Yardley, Washington. On July 23, 1966, the Claimant, together with a number of other employes, was notified by the Superintendent to appear for an investigation on July 26, 1966. So far as the Claimant herein was concerned, the notice provided in part:

"You are hereby notified in accordance with the rules of your respective schedule to report at the Office of Assistant Superintendent, Spokane, Washington at 9:00 A.M. Pacific Daylight Time, Tuesday, July 26, 1966 for investigation to ascertain facts and determine your responsibility of collision between Extra 2500 West and Extra 303 East which occurred at approximately 11:20 A.M. July 21, 1966 between Spokane and Yardley, Washington.

"As a result of this occurrence Dispatcher G. J. Longbottom is charged with violation of Rules B. M. 108, 702, 712, 991 and 992 of the Consolidated Code of Operating Rules, edition of 1959."

On the same date, July 23, 1966, the Superintendent issued notice to all those who had been cited that the investigation scheduled for July 26, 1966, was postponed until August 5, 1966. On July 27, 1966, the Superintendent issued another notice indefinitely postponing the date for the investigation, stating

that the postponement was at the request of the Local Chairman of the Brotherhood of Locomotive Firemen and Enginemen and due to the hospitalization of Engineer L. J. Kuhn. On April 12, 1967, the Superintendent advised those involved that the investigation would be held on April 24, 1967, and as to dispatcher Longbottom stated:

“Dispatcher G. J. Longbottom is also charged with violation of Rule 105(A) in addition to those previously noted.”

The investigation was conducted on April 24, 1967. At the beginning of the investigation Claimant's representative protested the timeliness of the investigation under Rule 28 of the Agreement, and also protested that the notice did not constitute a proper charge. On May 8, 1967, the Claimant was assessed an actual suspension of fifteen calendar days, extending from May 12, 1967, to May 26, 1967.

The Carrier maintains that the investigation was postponed at the request of the Local Chairman of the Firemen's Organization and due to the hospitalization of engineer L. J. Kuhn, one of the employes involved, and that the Claimant was not prejudiced by reason of the postponement.

Rule 28 of the applicable Agreement reads in part:

“DISCIPLINE AND GRIEVANCES

“Rule 28. (a) Except as provided in Rule 27, a train dispatcher will not be disciplined or dismissed without a fair and impartial hearing, which shall be held within ten (10) calendar days after the date of the occurrence to be investigated or within ten (10) calendar days after the date the Management has knowledge of the occurrence to be investigated. Suspension pending a hearing and decision thereon shall not be deemed a violation of this principle.

* * *

“(j) Time limits provided for may be extended by agreement between the Management and the train dispatcher or his representative.”

The Petitioner contends (1) that the Carrier failed to comply with the procedural requirements of Rule 28, and (2) that the facts developed at the investigation did not establish any responsibility on the part of the Claimant for the accident involved.

The record is clear that the investigation was not held within the ten-day time limitation of Rule 28(a). The record is also clear that no agreement was reached when the Management and the train dispatcher or his representative to extend the time limit for the holding of the investigation. The procedural requirements of the Agreement were clearly violated by the Carrier, and we will sustain the claim on this basis, without passing upon the question as to the responsibility on the part of the Claimant for the accident involved. See Awards 14496, 16697, 12103, 8714, among others.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.