

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20686
Docket Number TD-20526

Robert A. ~~Franden~~, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (Burlington Northern Inc.

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

(a) Burlington Northern Inc., (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Article 24 thereof in particular, by its action in assessing discipline in the form of five (5) days' actual suspension from **service** on Train Dispatcher D. S. Johnson and Train Dispatcher A. G. Thompson. The record of formal investigation held on February 18, 1972 fails to establish any responsibility on the part of the Claimants as charged, thus Carrier's action was arbitrary, capricious and in abuse of managerial discretion.

(b) Carrier shall now be required to compensate Claimants for wage loss sustained, and to remove the charges from their personal records which purportedly provided the basis for assessment of discipline.

OPINION OF BOARD: Claimants were given a 5 day suspension from service for an alleged **violation** of **Rule 25** of the Train Dispatcher's Manual, The **Claimants** take the position that they were summoned to the investigation charged with one offense and then disciplined for a different offense.

The facts surrounding the case are as follows. **The** Claimants were the train dispatchers in charge of the territory within which **Train** No. 157 struck a Signal Maintainer's Motor Car. Prior to the accident a broken rail had been reported. The Claimants had the responsibility of advising the trains due to move over the point where the broken rail was located of the condition of the track. Rule 25 requires that a train order be given **containing** the necessary instructions.

"25. **PROTECTION** OF SLOW OR IMPASSABLE TRACK: Train Dispatchers must familiarize themselves with the provisions of Maintenance of Way Rules for the protection of slow or impassable track.

When issuing **slow** orders, do not address the order to passenger trains only or to freight trains only, as **under Rule 12** a train not governed **by** the speed specified in such train order would be required to move through the territory at 10 MPH.

When notified of broken rail or other unsafe condition in track, **until** proper information can be obtained as to speed restrictions **necessary**,

trains must be given a train order instructing them to stop, inspect and be certain the track is safe before proceeding.

If advised of an improperly displayed track flag, the train dispatcher must take prompt action to obtain the necessary authority from the maintenance of way department before issuing any instructions to the train."

The Claimants elected to handle the matter by message rather than train order. This was an admitted rule violation to which Claimants alleged a defense. Notwithstanding the assertion by the Carrier to the contrary in its submission the record is clear that the admitted rule violation was neither proximately nor remotely the cause of the accident.

It is the contention of the Organization that the Claimants were charged with an offense different from that for which they were disciplined. The Claimants were sent notice to attend an investigation "for the purpose of ascertaining the facts and determining your responsibility in connection with Signal Maintainer's Motor Car being struck by train 157, Extra 6416 West about 1,000 feet East of Mile post L09 between Joppa and Rosebud at about 9:15 A.M. on February 3, 1972."

"As a result of this occurrence, Messrs. D. S. Johnson and A. G. Thompson are charged with violation of General Notice, Rules 101, 108, 700, 702, 702(B) and 990 of the Consolidated Code of Operating Rules and Rules 1, L0, 17, 21, 25, 27 and 74 of the Train Dispatcher's Manual, Form 15122."

There can be no question but that the object of the investigation was to specifically determine who was responsible for the accident in order that those responsible might be properly disciplined. The investigation brought out that the Claimants had violated Rule 25 in a matter apart from the accident under investigation.

Did the notice given contain language sufficiently broad to include the violation for which the Claimants were disciplined? We think not. The notice would correctly lead the Claimants to believe that if they could establish their Lack of responsibility for the accident they had an absolute defense to the charges brought against them. The violation of Rule 25 for which they were found guilty lay outside the scope of the notice and charges.

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

That the parties waived oral hearing;

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;

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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:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.