

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Appeal of the dismissal of Train Dispatcher W. L. Miller on August 26, 1987. [Carrier file 82-87-5]"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

There is no dispute that the Claimant on August 15, 1987 authorized two opposing trains to occupy the same block of track, causing the potential for a collision. However, because the two engineers of the trains involved became aware of the condition, the situation was resolved without mishap.

Because guilt to the charge at issue has been established, the only question before the Board is whether the severity of the penalty imposed by the Carrier is proper. Clearly, the Claimant's error is one of the most serious that can be committed in this industry. It is so serious that it has become well-established that it may rightfully lead to dismissal without consideration or application of the principle of progressive discipline. On the other hand, in this particular case, the Carrier did offer to reinstate the Claimant on two separate occasions without backpay. Given the nature of the offense and, even though the Board realizes that there may have been some adverse impact on the Claimant's seniority had he accepted the offer of reinstatement, the Claimant was ill-advised when rejecting these offers. Nonetheless, under all the circumstances prevalent Claimant is to be returned to service but without compensation for the time out of service.

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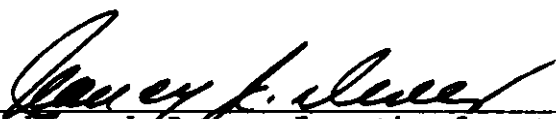
Award No. 28645
Docket No. TD-28862
91-3-89-3-268

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.