Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33607
Docket No. TD-34946
99-3-98-3-688

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Department
(Brotherhood of Locomotive Engineers
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"This will serve as an appeal to CSXT Transportation ('Carrier or CSXT') decision and discipline assessed Train Dispatcher D. M. Propp, ID 321805, as result of formal investigation conducted on November 6, 1997, concerning notice of charges dated October 14, 1997.

The Organization hereby request that reconsideration of the discipline assessed Train Dispatcher Propp, that he be exonerated of all charges and compensated for all time lost."

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 Carrier, on October 14, 1997, cited Claimant for an Investigation,

"...TO DEVELOP THE FACTS AND PLACE YOUR RESPONSIBILITY, IF ANY, IN CONNECTION WITH FAILURE TRAIN N209-05 ENGINE 222 RELEASING THE MADDEN, WATERLOO, AND CORONA DTC BLOCKS AND FAILURE TO MONITOR FOR ACCURACY THE REPEAT OF AUTHORITY AND/OR INSTRUCTIONS, AT OR ABOUT 1715 HOURS, OCTOBER 8, 1997, SPARTANBURG SUBDIVISION, AND CONNECTION WITH FAILURE TO PROVIDE PROPER PROTECTION WHEN AUTHORIZING TRAIN F/85-08 ENGINE 8210 THE PARKE JUNCTION DTC BLOCK, AT OR ABOUT 1734 HOURS, OCTOBER 8, 1997, SPARTANBURG SUBDIVISION, AND YOUR FAILURE TO REPORT THE INCIDENT TO A SUPERVISING OFFICER, DURING YOUR TOUR OF DUTY, OCTOBER 8, 1997, AND ANY AND ALL CIRCUMSTANCES RELATING THERETO."

The Hearing was finally held on November 6, 1997, following which Claimant was assessed a 30-day actual suspension for that with which he was charged.

There is no dispute regarding Claimant's culpability for the charges assessed. The Organization, however, has aggressively sought nullification of the discipline process in this instance by arguing a disparity in discipline. It argues that the same Rules Claimant was found to have violated are also applicable to the train crews involved, thus, the discipline assessed should have been no more severe than that of the Conductor who, in fact, was not disciplined at all.

This argument concerning the Rules is valid with one exception and that is Rule 531, which reads as follows:

"531. Train dispatchers are responsible for directing the movement of trains and on-track equipment. This must be done in a safe and efficient manner. It must also be done in accordance with the rules, special instructions and procedural instructions governing centralized train dispatching system."

The above Rule is applicable only to Train Dispatchers. They have the full responsibility for the movement of all train traffic within their territory.

The system, however, is also designed, as much as it is possible to be, as failsafe as possible. Train Orders, Blocks, etc., are given and repeated for accuracy and understanding. Releases are given and repeated for accuracy and understanding. In this instance, two people were talking, but neither was listening. Both were at fault in this instance, but the Dispatcher also keeps a record of Blocks given to whom and when and time released. His immediate supervisor stated that from that record it should have been obvious to Claimant that he had given the same authority for occupancy of a block to more than one train. This was particularly so when the Trainmaster called Claimant to check out what had happened after he had been advised of the occurrence by the second train crew. In fact, after the transcript of the conversation between the Trainmaster and Claimant is reviewed, it is clear to the Board that Claimant was aware of the overlapping authority he had permitted.

The disparity in discipline assessed is not a new issue. Numerous authorities in the industry have wrestled with this problem. One underlying theme is clear from the review of these Awards. Award 2 of Public Law Board No. 4767 stated:

> "As regards Engineer Brown's claim concerning disparate and/or discriminatory treatment, the record reflects that he was the individual crew member who had the prime responsibility to maintain a proper and controllable speed on the train; moreover, his record appears markedly worse than the other claimants involved. In our judgment this combination of factors compels this board to summarily conclude that claimant was not the victim of discriminatory treatment, and therefore is not entitled to a summary judgement sustaining his claim and reinstating him to service on that particular ground." (Emphasis added)

In this instance, the Board is aware that the Conductor, who failed to correct the Dispatcher's misunderstanding of the blocks released, was not disciplined. It is also evident that the only reference to Claimant's record was the printout attached to the Investigation dated December 15, 1998. Because the Board acknowledged receipt of this dispute on October 6, 1998, the December 15, 1998 printout of Claimant's record is not properly before the Board and cannot be considered.

Claimant does have the ultimate authority for train traffic control. He also maintains a written record of block authority given and released. He knew of the incident and should have reported it. There can be a disparity in discipline when one

has a greater responsibility than another and has a past history of being disciplined for violation of existing Rules. Claimant can be assessed discipline even though the Conductor was never charged, but because there is no history of Claimant's past disciplinary record properly before the Board (or even mentioned or referred to in the on-property handling) his 30-day suspension will be reduced to ten calendar days. Claimant is to be paid for all time lost in excess of the ten calendar days as provided for in the existing Agreement.

AWARD

Claim sustained in accordance with the Findings.

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 16th day of November 1999.