Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35745
Docket No. TD-35857
01-3-99-3-863

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Department/
(Brotherhood of Locomotive Engineers
(
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

"The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as 'the Carrier') violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as 'the Organization') including but not limited to Article 24(b) in particular when on October 6, 1998, the Carrier arbitrarily placed a mark of censure on Ms. Templeton's record without cause and absent any rules violation. The Carrier shall now clear the record of Ms. Templeton."

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.

Following the Investigative Hearing, the Claimant receive a disciplinary censure for the following:

"[F]ailure to report a rules violation relating to an incorrect 'Effective Date' on Form B Track Bulletin number 5721 dated Tuesday, August 25, 1998 while

working 3rd shift dispatcher at or about 00:07-CDT, Wednesday, August 26, 1998. . . ."

In support of its action, the Carrier cited two Rules, as follows:

"Rule 40.21 - Rules Violations:

When it becomes apparent that you or employees in the field may be involved in a rules violation, you need to report the violations to your supervisor.

Safety Rule S-28.4:

Employees must cooperate and assist in carrying out the rules and instructions. They must promptly report any violations to the proper supervisor. They must also report any condition or practice that may threaten the safety of trains, passengers or employees, and any misconduct or negligence that may affect the interest of the railroad."

Responding to a request for track clearance for Maintenance of Way operations on Wednesday, August 26, 1998, the second shift Train Dispatcher on duty on August 25 (immediately preceding the Claimant's shift) issued a Track Bulletin Form B, referring to "Wednesday, August 25, 1998." The day of the week was correct; the date was incorrect and was obviously ineffective, because the time for track clearance (if actually meant for August 25) had already passed.

The Claimant testified that shortly after commencing work, she was alerted to the day/date inconsistency when a "train crew informed that Kansas City Dispatcher that it had the wrong date on it and the Kansas City Dispatcher, in turn, told her."

There was no criticism of the Claimant's action, which was simply to issue a Track Bulletin Form B in sufficient time for it to be fully effective. The basis of the censure was that, under Rule 40.21, the Claimant had failed to advise her Supervisor of a "rule violation," assumably by the second shift Train Dispatcher.

The Claimant persistently contended that she was unaware of a "rules violation" and that she was simply correcting a "typographical error." (It must be noted that the "error" extended only to the date and not to the correctly stated day of the week.)

The Organization, with equal persistence, sought during the investigative Hearing to elicit from the Carrier what specific Rule had been violated by the second shift Train Dispatcher. The record shows no reply to this inquiry.

The Board does not have before it any review of the conduct of the second shift Train Dispatcher. There is thus no way for the Board to determine whether the half-right, half-wrong date on the Train Bulletin Form B was considered by the Carrier to be a careless error or a violation of some unspecified Rule. That distinction is for the Carrier to make. There is, however, no basis whatsoever for the Carrier to expect another Train Dispatcher (the Claimant) to sit in judgment to distinguish between (a) an obviously unintentional error in work performance, and (b) a readily observable "rule violation."

In addition, in this instance, the Claimant did not in any way seek to ignore or to disguise the other Train Dispatcher's error. The error, in fact, came to her attention from others. To accept the Carrier's theory of the case, all others who questioned the contradictory day/date would have been responsible for reporting to their Supervisors that a Rule violation had occurred. Simply to state this is sufficient to show the impropriety of the Claimant's censure.

AWARD

Claim sustained.

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 24th day of October, 2001.