

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
GRAND CENTRAL TERMINAL**

DISPUTE.—

"Claim that George Dertinger be restored to his former position of signal mechanic and that he be compensated for monetary loss sustained since June 28th, 1935, due to demotion to position of Assistant Signal Mechanic."

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

The carrier and the employee 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.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Willard E. Hotchkiss was appointed Referee to sit with the Division as a member thereof.

BROTHERHOOD'S STATEMENT OF FACTS.—

"Immediately prior to and on June 28, 1935, Signal Mechanic George Dertinger was employed in a signal gang under supervision of foreman Potthoff. On June 28, 1935, Dertinger and other men in such gang were engaged in changing out the guide and magnets on switch lever No. 41 at Tower 'U.' In performing work of this kind, it was the general practice and routine for the foreman of the gang to get permission from the train director to temporarily suspend operation of the switches or signals operated by the lever involved. In case of a switch being involved, it was the practice for the foreman to see that the switch was 'spiked' or securely fastened so that it could not be thrown.

"Signal Mechanic Dertinger, on the particular day involved in this case, was assigned to do the work at the interlocking lever and the foreman gave him an O. K. to proceed with the work although, as it later developed, the switch had not been spiked. During the course of Dertinger's work on the lever, he made a mistake in connecting up the magnet wires and when the fuse was replaced by a helper, acting under orders from the foreman, the switch was moved to the reverse position and a minor derailment occurred. The train affected by the improper movement of the switch was a yard move. One set of wheels of one of the cars had passed over the switch before the switch was thrown and the other set of wheels was diverted in the other direction. The car was lifted in the air slightly, causing one of the grab irons to be knocked off. The engineer stopped the movement at once and the train was backed up until the rear wheels could be routed in the same direction as the front wheels. There was very little damage and no one was injured.

"Because of this occurrence, foreman Potthoff was demoted from foreman to signal mechanic and Dertinger was demoted from signal mechanic to assistant signal mechanic. Potthoff was placed on the position made vacant by Dertinger's demotion. The management's action in demoting Dertinger to an assistant signal mechanic, as discipline for alleged violation of rules, was immediately protested and a hearing or investigation was held on July

8th. Under date of July 20, 1935, General Chairman Green was advised by Assistant Signal Engineer Smith that the management had decided to let the discipline stand as administered. General Chairman Green appealed to Terminal Manager Hustis and a conference was held on August 1, 1935. Mr. Hustis, however, affirmed the discipline awarded by the Assistant Signal Engineer.

"As shown on the seniority roster of January 1, 1935 (the last one issued prior to his demotion) Dertinger was shown as having been in the service of the Grand Central Terminal seven years, eight months, and twelve days. He held seniority as a signal mechanic for four years, eleven months, and sixteen days. It will therefore be seen at the time of his demotion he had more than five years' experience as a signal mechanic.

"No charge of inefficiency, inexperience, or lack of qualifications was placed against Dertinger by the management. He was demoted as discipline or as a penalty for alleged violation of rules and instructions."

CARRIER'S STATEMENT OF FACTS.—

"On the morning of June 28th, 1935, Signal Mechanic G. Dertinger disregarded instructions and rules in changing lever guides, indication and safety magnets on switch No. 41, Grand Central Terminal. He transposed control wires on the indication selector. As a result of this transposition of wires and the fact that the switch had not been safely secured in proper position as provided by the rules and instructions, switch No. 41 moved to the reverse position with the lever in the interlocking machine in the normal position while a yard engine and four cars were passing over the switch. For his negligence, carelessness and disregard of rules and instructions, Dertinger was demoted to Assistant Signal Mechanic."

POSITION OF THE PARTIES.—

PETITIONERS.—The Brotherhood contends that Dertinger was not guilty of the charge of violating operating rules and instructions; that he was working under the direct supervision of a foreman; that he proceeded with his duties in the customary and approved manner; and that the error he made in connecting up the indication magnet wires was an error that might have been made by any employee engaged in such work and would have caused no difficulty whatever if proper precautions had been taken by other men connected with the work being done. For these reasons it is maintained that his discipline was needlessly severe and unjustified.

CARRIER.—The carrier maintains that because of the responsibility attached to the safe operation of signal systems and the disastrous results that might result should such systems function improperly, it is extremely important that rules and instructions for the guidance of employees engaged on signal work be rigidly enforced in order properly to safeguard the traveling public. The carrier cites various rules that are enforced in order to insure the safe operation of signal systems, and they point out that Dertinger had been examined on those rules only a short time before the chain of circumstances occurred, which led to his demotion.

Quoting from the carrier's statement, "Mr. Dertinger's entire defense of the violation of the rules was that he was working along with the foreman and did not recognize that he had any responsibility for the observance of the requirements of the rules because of the presence of the foreman. We consider this position untenable, Mr. Dertinger being an experienced mechanic. His record is as follows: Assistant Signalman or Assistant Signal Maintainer, 6/1/27 to 12/16/29; Signal Mechanic to 6/1/31; Assistant Signal Mechanic to 7/1/31; Signal Mechanic, 7/1/31 to date demoted. The Company, therefore, was justified in expecting him to perform his work as a qualified mechanic should."

PETITIONERS.—The petitioners submitted a supplemental statement in which they took issue with certain of the carrier's contentions and emphasized the excellent record which Dertinger had maintained in the service of the carrier. At the end of the supplemental statement the petitioners devoted considerable space to a criticism of the general policy of using demotion as a form of discipline. They say, "This situation may well be likened to what would exist if a railroad company were to discipline a qualified experienced locomotive engineer for some mistake made in the handling of his train by demoting him to a fireman even though he had many years of seniority as an

engineer and a long period of satisfactory service." Quoting later in the same statement, "The usual way of dealing with such cases is to apply punishment that corresponds with the offense, and the discipline might range anywhere from a reprimand to a dismissal."

CHAIRMAN GREEN'S STATEMENT.—Following this supplemental statement is an additional statement by General Chairman Green in which he outlines the practice on the Grand Central Terminal in respect to work of the sort with which Dertinger was occupied at the time of the occurrence which led to his demotion. The statement was to the effect that some mistakes happen frequently and are bound to happen. The protection against accidents, he maintained, is found in the checks upon work which is provided by the enforcement of all rules rather than in complete absence of mistakes. As illustrating what he considered the undue severity of the discipline imposed upon Dertinger, Mr. Green cited a subsequent occurrence in September 1935 in which a signal mechanic was disciplined by a ten day record suspension. Mr. Green's statement on its face carries the inference that Dertinger was singled out for exceptionally severe discipline.

CARRIER.—The carrier in its "Rebuttal Statement and Written Argument", reiterated its position and answered certain of the statements of the petitioners, especially those in respect to seniority and the operation of certain rules of the agreement. Inasmuch as these discussions are not controlling, they need not be outlined at this time. The carrier put special emphasis upon the point that it is not a question of how serious were the consequences of Dertinger's omission, but how serious they might have been. The carrier submits that, "the entire operation was performed in a careless and indifferent manner without any regard whatsoever for the rules and instructions, and Dertinger's negligence and responsibility could not be condoned, notwithstanding a foreman was in charge of the gang." The argument of the carrier tends to minimize the relative responsibility of the foreman in comparison with the responsibility of the signal mechanic.

The statement then again stressed the responsibility of the carrier for safe operation and the harmful results that would follow if this Board were to impair the carrier's authority over discipline. Quoting from the carrier's statement, "Any attempt by an outside agency, body, or tribunal to take from the management of the carriers the final decision in discipline matters; to impose its judgment as to the degree of discipline that should be assessed in individual cases, or as to whether or not men are safe or unsafe to be entrusted with definite kinds of work, or as to whether or not any discipline was justified, thus substituting its judgment for that of the railway officials, while responsibility for safe operation continues to rest with the management must inevitably break down discipline and turn railway employees into a lawless body, jeopardize the safety of passengers, and of railway employees themselves, and destroy the confidence of patrons and prospective patrons in both railway managements and employees."

At the end of this statement, Carrier's Exhibit No. 5, which closes the record, sets forth the cases of eleven signal maintainers, of whom seven were demoted to assistant signal maintainers, three were demoted to helpers, and one was dismissed, between October 24, 1931, and May 26, 1935, for improper and poor performance of duties, disobeying instructions, and violation of rules.

VERBATIM REPORTS OF HEARINGS.—The record contains verbatim reports signed in each case by Dertinger of the hearings held on June 28th and July 8th, 1935, before officers of the carrier. At the hearing of July 8th, General Chairman Green was present and participated in the questioning.

These hearings in the judgment of the Referee constitute an extremely important part of the record. The petitioners and the carrier draw quite conflicting conclusions from them as to the seriousness of Mr. Dertinger's offense, but the basic facts from which they both proceed seem to be set forth with considerable clarity in the report of these hearings. Disagreement as to what the hearings, taken together with other facts contained in the record, actually indicate is not acrimonious and appears to be entirely sincere on both sides. In these circumstances, it becomes necessary to rely principally on the undisputed facts themselves in reaching conclusions.

OPINION OF REFEREE.—This case has been ably presented both by the parties and by their respective representatives on the Board. The language used is for the most part measured and appears to have been carefully con-

sidered. There is no issue between the parties either as to the absolute necessity for safe operation of trains nor as to the important function which signalmen perform in connection with such safe operation. Moreover, it is recognized by both parties that the operation of a congested metropolitan terminal like the Grand Central Terminal presents peculiar problems, and places heavy responsibility upon both carriers and their employees.

The carrier properly maintains that insistence upon efficiency and strict observance of rules with rigorous discipline for any deviation from the proper performance of duty is absolutely essential to the safe operation of an institution such as the Grand Central Terminal.

The petitioners, in substance, admit this contention, and they call attention to the fact that in the oral hearings before officers of the Company, neither Dertinger nor his representatives tried in any way to divert attention from the fact that he had committed an error in connection with his work. The petitioners point, however, to the record of men demoted since 1931 as an indication that demotion in such cases is practically permanent, and they argue that a feeling on the part of the employees that they are liable to permanent demotion for slight errors tends to undermine morale and defeats its purpose. The petitioners also enlarge upon their contention that the dereliction of the foreman was of much greater seriousness than that of Dertinger. They submit the whole record of Dertinger, and his attitude toward his mistake, as evidence that he is well-qualified, trustworthy, and responsible employee.

A point upon which the petitioner's representative placed considerable emphasis in arguing the case before the referee was the disparity between the discipline administered to Dertinger and that administered to the train director who permitted the work in question to proceed without having in his hands a "signal out of service" notice which the rules specifically require in such cases. The train director's responsibility, it was urged, was even greater than that of the foreman. It was argued that if the train director had done his duty neither the serious carelessness of the foreman nor the less serious mistake of Dertinger would have had any harmful results.

The carrier's representative, in arguing the case before the referee, reiterated the arguments of the previous hearing and cited an imposing list of decisions by referees Samuell, Spencer, and Garrison, and one by this referee, in which the right of carriers to administer discipline was upheld. In at least one of these cases, Award No. 71, Docket SG-89, which the carrier also cited in the record, the circumstances were not dissimilar to those in the instant case. Another decision by this referee, which was cited, did not involve discipline but the disqualifying of a man holding seniority rights in connection with the assignment of an assistant signal maintainer. By upholding the disqualification, the referee indicated the importance which he attaches to signaling in connection with safe operation, a fact which is self-evident.

Assuming, as the referee does, that neither party has intentionally violated its agreement, the paramount issue in this case is the safety of the traveling public and of the employees of the Grand Central Terminal. The referee is in full accord with the long line of decisions in which the necessity for maintaining discipline has been upheld. Moreover, he is fully aware that successful discipline cannot be maintained if the responsibility of management for discipline is shared with an outside body such as this Board. Certainly, this Board is in no position to lay down rules which would seriously affect the technical operation of a mechanism like the Grand Central Terminal.

The record for safety which the railroads of the country have maintained is in marked contrast with the safety of some other means of travel. The explicitness of rules under which railway transportation is carried on, and the rigor of the discipline with which those rules are enforced, have undoubtedly been large factors in making and constantly improving this record for safe transportation. The petitioners in this case and their representatives have shown a pride in this achievement which is not overshadowed by the solicitude of the carrier for safe operation. It is not for this Board, nor for a referee serving with this Board, to place any handicaps in the way of preserving and fortifying this attitude with its attendant benefits.

There are, however, certain inescapable limitations upon management in its exercise of discipline. These limitations are found either in the terms of particular agreements or in the application of principles of fairness, legality, and correct procedure. This referee has partially indicated what he considers

to be the nature of some of these limitations in a previous case. In Award No. 271, Docket CL-315, he used this language:

*"The referee agrees that discipline is a necessary attribute of management on hours and working conditions that such consideration and agreements * * *. Just as discipline is a necessary attribute of management, so is regard for due consideration and proper procedure in the exercise of discipline so much of the essence of successful operation of agreements on hours and working conditions that such consideration and procedure may be held to be implicit in such agreements."*

On the merits of the case the discipline administered in CL-315 was upheld.

In the instant case data contained in the record suggests a rather wide disparity in the severity of discipline imposed in the several cases to which attention was called—a disparity which appears to be out of line with the relative seriousness of the offenses involved. As one example, in the incident which occasioned the bringing of this case, the train director whose neglect appears to have been a large element in the incident, taken as a whole, suffered only a book suspension which did not subject him to any monetary loss.

Obviously, Dertinger's two claims, (1) for reimbursement, and (2) for reinstatement, will have to stand or fall primarily on their own merits; but it is proper to examine the discipline administered in other cases and also the policy of the management in respect to discipline insofar as these items may throw light on this case.

In spite of the record of the Grand Central Terminal for safe operation, and in spite of the unquestioned responsibility and authority of its management to maintain discipline, certain questions have been raised which justify consideration as an incident to the complete disposition of Dertinger's claims. This Board would be neglecting its duty if it did not consider these questions. What bearing such questions may have upon Dertinger's future status with the Company can only be determined in the light of more complete information than is now before the referee.

AWARD

(A) *Claim for back pay.* Notwithstanding the questions herein raised and the apparent disparity in the discipline administered in some of the cases cited, the referee is not prepared to say that, standing by itself, the discipline which Dertinger has suffered to date is unduly severe. His claim for reimbursement up to the date this decision is promulgated is therefore denied.

(B) *Claim for reinstatement.* The referee does not regard the questions raised above as properly contentious. The parties have a join interest in maintaining discipline and in seeing to it that the measures directed toward this end serve their purpose. With this thought in mind the referee is not disposed at this time to pass judgment on Dertinger's claim for reinstatement as a signal mechanic. This part of the claim is, therefore, remanded to the parties with a direction that they re-explore all the circumstances jointly and try to reach an amicable agreement which shall meet the requirements of justice and of necessary discipline. Failing that, their supplementary statement or statements may be brought before this Board, and the claim for reinstatement again considered on its merits.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 30th day of July 1936.