

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that Dispatcher A. Overlin be reinstated to his position as Third Trick Assistant Chief Dispatcher in the Salt Lake City, Utah office, and

(2) That Mr. Overlin be compensated in full for all salary lost by reason of his unjust removal from this position, commencing with March 23, 1944, and continuing until such time and date as his reinstatement as Third Trick Assistant Chief Dispatcher, Salt Lake City office, is made effective, and

(3) That Dispatcher Overlin's record shall now be cleared of the entry of demotion to train dispatcher dated March 31, 1944, and any and all charges in connection therewith.

OPINION OF BOARD: This is a claim on behalf of Dispatcher A. Overlin for reinstatement as Third Trick Assistant Chief Dispatcher in the Salt Lake City, Utah office; that he be compensated for all salary lost by reason of his removal and that his record be cleared of all blame.

The Carrier's disciplinary action was based on four charges wherein Claimant is alleged to have failed to properly perform his duties. The evidence is not in dispute. The questions are whether or not the charges were of sufficient importance on which to base disciplinary action and whether or not the action taken was capricious or arbitrary.

The position of Assistant Chief Train Dispatcher is one of extreme importance on any railroad. Upon his diligence and judgment rests the safety of the traveling public who use the road while he is directing its traffic. The safety of workmen and the preservation of much valuable property are dependent on the quantum of care with which he performs his duties. His failure to use care may be costly to his employer and dangerous to numerous people.

In the instant case the charges were as follows:

Charge No. 1:

"February 23, 1944, Extra 1409 East arrived Thistle 7:45 A. M. having 1691 adjusted tons available to east of Thistle, a 3500 engine being called to help this train whereas train should have been given a small 1100 helper engine or should have made a small reduction and gone single."

Charge No. 2:

"March 12, 1944: Train No. 12, engine 785, arrived at Springville 4:25 A. M., developed engine trouble on engine 785, and engine unable to handle the train further. Another engine had to be furnished to advance this train. None of the crew on this train were released at Springville which made it necessary to send crew to Thistle by train and then to Salina by auto to relieve the crew on No. 12."

Charge No. 3:

"March 14, 1944: No. 6, engine 1713, 11 cars, called to leave Salt Lake Union Depot 11:20 P. M., arrived Thistle 2:38 A. M., left 3:20 A. M. Main 11474, 10 cars, engine 3709, called to leave Salt Lake Union Depot 11:30 P. M., arrived Thistle 1:50 A. M., left 2:01 A. M. Helper engine was called to help No. 6 with 11 cars, no helper being needed for Main 11474 but main train was given the helper engine called for No. 6, No. 6 being badly delayed at Thistle waiting for helper engine."

Charge No. 4:

"March 21, 1944: Main 11135, engine 3710, 17 cars called to leave Salt Lake Union Depot 12:05 A. M., left 12:25 A. M. Train included PA. 2404 with freight trucks which limited speed of train to maximum speed permitted freight trains and connection division not given notice of train including this car which notice should have been given."

Charge number one involves the use of equipment not required by the necessity of the occasion, and the excuse was that he could not secure needed information in forming a decision as to the size of engine needed. However, he made no showing that he attempted to secure the proper data, and assigned the large engine without having any logical reason for his action.

In handling the problem which gave rise to the second charge, he admittedly forgot to release the crew when talking with the conductor and then made no effort to correct the mistake and save the expense of transporting a crew more than one hundred fifty (150) miles.

Charge number three was subject to some mitigating circumstances, but it was his personal order that changed the sequence of trains and he should have carried and changed the order for a helper.

Charge number four is admitted, but it is claimed that no harm resulted and others had the duty of checking the train and knowing its contents, and that therefore the full responsibility did not rest on the Claimant. However, a rule was violated, and the failure to perform a duty placed persons and property in a position from which harm might have resulted. The excuse by way of avoidance was insufficient.

There is no evidence of illness prior to the occurrences on which the charges are based. In fact, there is nothing in the record to explain why a man with twenty-three years of experience in dispatching trains, should make mistakes of this character.

This division is firmly committed to the proposition that in matters of this kind, the decision of the hearing will not be disturbed unless it is shown that the employer acted arbitrarily without just cause, or in bad faith. Awards No. 135—No. 1443.

Here, A. Overlin was demoted one position. It appears that his previous record must have been considered in the fixing of the penalty. The action of the employer was based on each of the four specific charges and the evidence adduced at the hearing. It therefore was not arbitrary. It was not unjust and no bad faith is shown. The evidence is sufficient to support the decision that he be disciplined, and that some punishment be meted out for each offense.

He lost nine days because of the suspension. Of his own will he failed to accept the position offered him under his seniority rights. He was discharged for failure to report for duty when notified. Under such circumstances we need not consider whether or not the discipline imposed was excessive. Any punishment given would have been equal to or in excess of that which he suffered.

The claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1946.