

Award No. 3339

Docket No. TE-3371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana that Mrs. J. L. Sammons be paid for time lost during the period December 2, 1944 to July 7, 1945, inclusive.

OPINION OF BOARD: This is a discipline case brought before the Division on a joint submission. There are three employees involved in this occurrence, D. D. Speeg, the Train Dispatcher located at DeQuincy, Texas, the Claimant, Mrs. J. L. Sammons, an Operator located at Huffman, Texas and Mrs. R. G. Pearce, an Operator located at Gulf Coast, Texas.

On November 20, 1944, the Train Dispatcher issued the following Train Order:

"No. 9 Eng 372 wait at

Huffman until 8:43 A. M.
Harmaston 8:49 A. M.
Victor 8:52 A. M.
Dyersdale 8:56 A. M.

First 63 Eng 1219 meet

Second 160 Eng. 163 at Dyersdale.
/s/DDS"

The Claimant, Mrs. Sammons, immediately repeated the Order to the Dispatcher and it was completed to her at 7:37 A. M. and cleared the train at 7:37 A. M. As Train No. 1/63 was approaching Huffman, Mrs. Sammons left the 'phone to deliver the Order to Train No. 1/63 without waiting to hear the Operator at Gulf Coast repeat the Order. The Operator at Gulf Coast failed to copy the last paragraph of the Order that provided "First 63 Eng. 1219 meet Second 160 Eng. 163 at Dyersdale". And as a result Train Second 160, instead of meeting Train First 63 at Dyersdale, met that train on the main track at Victor, located 3.6 miles east of Dyersdale.

An investigation was held at Houston November 29, 1944 and the Claimant, Mrs. Sammons, was dismissed from service on December 1, 1944.

Claim for reinstatement with pay for time lost was made by the Petitioner in behalf of Mrs. Sammons. An agreement was reached whereby she would be reinstated to service with seniority unimpaired and the question of pay for time lost submitted to this Division.

Carrier contends that since the Claimant did not wait at the 'phone and ascertain if the Operator at Gulf Coast repeated the Order correctly, she violated Rule 211 of the Uniform Code of Operating Rules.

That Rule reads:

"When a '19' train order has been transmitted, operators must, unless otherwise directed, repeat it at once from the manifold copy, in the succession in which the several offices have been addressed. Each operator receiving the order should observe whether the others repeat correctly. When the order has been repeated correctly, the response 'complete,' and the time, with his initials, will be given by the train dispatcher. The operator receiving this response will then write on each copy the abbreviation 'com' for the word 'complete,' the time, and his last name in full and personally deliver a copy to each person addressed without taking his signature. But when delivery to engineman will take the operator from the immediate vicinity of his office, the engineman's copy will be delivered by the conductor or brakeman.

When a '19' train order restricting the superiority of a train is issued for it at the point where such superiority is restricted, the train must be brought to a stop before the clearance is OK'd by the train dispatcher and the order delivered."

Numerous awards of this Division have held that where an investigation is held in accordance with the established rules that "it is not the function of this Board to weigh conflicting evidence in a discipline case and if the evidence is such that, if believed, it will support the findings of the carrier, the judgment of the carrier will not be disturbed". Award No. 3321.

The evidence in this claim is not conflicting, and the question before us is: Is it sufficient to sustain the action of the Carrier?

At the hearing held in Houston, Train Dispatcher testified in regard to giving the Order in question. After giving the Order to the Claimant he testified as follows:

"She (the Claimant) immediately repeated the order and it was completed to her at 7:37 A. M., and the train was cleared at 7:37 A. M. and the operator left the phone to deliver the order to 1/63."

This witness then related about Gulf Coast repeating the Order.

It is true that the Claimant did not wait to hear Gulf Coast repeat the order, but we think she did do what was required under Operating Rule No. 211. Under that rule, when the order is completed by the Dispatcher, it is the duty of the Operator to personally deliver a copy of the Order to each person addressed. Note the language of the rule:

"When the Order has been repeated correctly, the response 'complete' and the time, with his initials, will be given by the train dispatcher. The operator receiving this response will then write on each copy the abbreviation 'com' for the word 'complete', the time and his last name in full and personally deliver a copy to each person addressed without taking his signature."

As soon as the Dispatcher completed the Order, the Claimant immediately delivered the Order to the Train Crew of the approaching Train No. 1/63. It seems to us she complied with Operating Rule 211. The Dispatcher was her superior officer and she understood that she was to give the Order to Train 1/63 when the Dispatcher completed it. And that excused her from listening to Gulf Coast repeat the Order. To have done otherwise would have slowed the train.

Carrier, also, relies upon Circular No. 80 identified as Item No. 9. It reads:

"Each operator receiving an order should observe whether the others repeat correctly, and must call train dispatcher's attention to any errors in repetition. Operators must not be excused from checking, except in emergency, and train dispatchers will make frequent tests to know that this requirement is being followed by operators."

The only reasonable inference to be drawn from this record is that both the Claimant and the Dispatcher consider she was excused from checking the Order when Gulf Coast repeated the Order. Under Circular No. 80 the operator could only be excused from observing whether other operators repeated the Order correctly when there was an emergency. Only the Dispatcher had the right to so excuse the operator. It was his duty to decide if an emergency existed. Since he did excuse the Claimant in this instance, she had a right to rely on his judgment as he was her superior. The claim should be sustained.

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 Employees involved in this dispute are respectively carrier and employees 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 was not justified in assessing discipline in this case.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1946.