

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of G. C. Reed, a train dispatcher within the scope of the existing agreement between the Missouri Pacific Railroad Company and the said Association:

1. That the Missouri Pacific Railroad Company did, on or about January 14, 1948, dismiss the said G. C. Reed from its service in violation of the provisions of Article 8 of the said agreement in that none of the three separate notices addressed to the said Reed by carrier requiring his attendance at a certain investigation held at Sedalia, Mo., beginning January 6, 1948, specifically charged the said Reed with any offense, as required by the said agreement.

2. That the dismissal of the said G. C. Reed constitutes an arbitrary, capricious and unjust act upon the part of the said carrier in abuse of its discretion, for the reason that its action is so clearly lacking in sufficiency and probative value as to deny to the said Reed the fair and impartial hearing required by the said agreement.

3. That the Missouri Pacific Railroad Company be required to restore the said G. C. Reed to its service and to his former position with seniority and all other contractual rights unimpaired; that the carrier be required to remove from the personal record of the said Reed any and all entries relating to its action in dismissing the said Reed, and that the carrier be required to fully reimburse the said Reed at his proper pay rate for all loss of compensation resulting from said dismissal, including compensation and expenses for attending the said investigation at the direction of the carrier.

OPINION OF BOARD: This claim is the outgrowth of a disastrous wreck on Carrier's line near Syracuse, Missouri, on the morning of January 1, 1948. There was a rear-end collision between a passenger train (1st No. 9) and a mail-express train (2nd No. 9), which resulted in the death of twelve passengers; two Pullman employes, and the injury of thirty-two passengers, one dining car employe, one train porter and three train-service employes. Also occasioning over one million dollars in property losses.

An investigation was held on January 6, 1948, at Sedalia, Missouri, which was conducted by the Interstate Commerce Commission, the Missouri Public Service Commission and the Carrier.

By reason of the seriousness of the matter the record is extremely long and the parties have submitted extended briefs in support of their respective

positions. Included in the record is a transcript of evidence taken at the hearing of January 6, 7, 8 and 9, 1948.

The accident occurred on that part of the Eastern Division extending between Jefferson City and Rock Creek Jct., Mo., 151.51 miles, a single-track line in the vicinity of the point of accident, over which trains are operated by time table, train orders and an automatic block signal system. On the main track 45:05 miles west of Jefferson City and 2:25 miles west of the station at Syracuse, Mo., the collision occurred.

A severe storm, rain, ice and snow made traffic conditions hazardous on the night and morning in question. Both trains 1st No. 9 and 2nd No. 9 were running behind schedule as a result of the storm. Weather conditions were extremely bad and there had been difficulty experienced with the signal system for several hours prior to the accident.

It is deemed that no useful purpose would be served by a review of all the evidence presented in the record of this case. It suffices to say that such a review, in brief, would of necessity needlessly extend this Opinion.

Claimant, G. C. Reed is a Train Dispatcher and was on duty at the time of the accident. Carrier, as a result of the investigation recited above, dismissed the Claimant on January 14, 1948.

The first question with which the Board has to deal is the sufficiency of notice given Mr. Reed of the hearing which resulted in his dismissal; and as to whether or not, the notice given met the requirements of Article 8 of the Agreement.

Article 8 provides as follows:

- “(a) **DISCIPLINE:** Train dispatchers shall not be disciplined, demoted or dismissed without proper investigation, as provided in the following Sections. Suspension pending an investigation shall not be deemed a violation of this principle.
- “(b) **INVESTIGATIONS:** A train dispatcher against whom charges are preferred, or who may consider himself unjustly treated, shall be granted a fair and impartial investigation by the Superintendent or his representative within ten (10) days after notice by either party. Such notice shall be in writing and contain the specific charge or nature of complaint. He shall be given reasonable opportunity to secure the presence of necessary witnesses. * * *”

The collision occurred at 7:48 A. M. on January 1, 1948. Dispatcher Reed was regularly assigned to the dispatching territory referred to in Carrier's operating time table as the Sedalia Subdivision, hours 12:01 A. M. to 8:00 A. M.

On January 1, 1948 arrangements were made for an investigation to be held January 6, 1948, at Sedalia, Missouri, starting at 9:00 A. M. The following notice was given Mr. Reed by Division Trainmaster Green:

“Arrange to attend I.C.C. hearing accident 1st and 2nd 9 at Sedalia 9:00 A. M., Tuesday, January 6. Take original train sheet train orders that 1st and 2nd 9 had and train order book. Report to Mr. Dougherty at Sedalia, second floor passenger station.”

On January 3, 1948, Dispatcher Reed made a statement in the form of a letter addressed to Superintendent Dougherty and Division Trainmaster Green concerning the accident, as follows:

“Referring to the attached regarding handling of train second 9 Jan. 1.

“The only conversation I had with any member of crew on this train was with brakeman Journey at Scott who called up and asked

about first 70 which they had a meet at Scott and I told him they was out of California at 3:34 A. M. and should be showing up soon.

"In addition to the orders this train received at Jefferson City and California I gave them a message at Jefferson City reading as follows.

'Pick up 1 car at Sedalia.'

"I gave them a message at California reading as follows:

'After you meet No. 20 at California and Second 70 at Clarksburg there is no opposing train in the block between Clarksburg and MKT Crossing.'

On January 4, 1948, an office memorandum was made by Division Trainmaster Green to G. C. Reed and Dispatchers reading:

"G. C. Reed go to Sedalia report to Mr. Dougherty for ICC hearing Tuesday A. M. Take train sheet orders and order book.

"Morse and Butler work their days off Monday and Tuesday acct no dispatcher to relieve them. Reed be back for regular swing Thursday A. M."

And on January 5, 1948, at 9:00 A. M., another communication was addressed to Dispatcher Reed by Division Trainmaster Green, reading:

"The hearing at Sedalia tomorrow 6th will be formal investigation in connection with collision 1st and 2nd 9.

"If you desire representative arrange for one."

In accordance with these directions Dispatcher Reed reported at Sedalia on January 6, 1948. He did not have a representative. The hearing lasted for four days and Mr. Reed was the last witness to testify on the fourth day, or on January 9, 1948.

As above stated, the transcript of evidence taken is long, covering 187 pages, typewritten single-spaced, in the record. In Dispatcher Reed's testimony, as shown by the transcript in the record, pages 217 to 226, inclusive, the following questions were asked of Mr. Reed:

"Q. Mr. Reed you have been present for the past four days and have heard read the caption of this investigation. Were you properly notified and are you ready to proceed.

"A. Yes sir.

"Q. Do you desire a representative and if so whom.

"A. Do not desire representative."

At the opening of the investigation on January 6, 1948, the following statement was made:

"This is a formal investigation of the employees involved in the operation of the trains, and is for the purpose of determining all the facts and place responsibility for the accident. Those present involved in this investigation will remain until the investigation has been completed."

An agreement was made between certain employees and the Superintendent on January 6, 1948 with reference to the nature of the hearing and relative to the presence of representatives of the press and public, but Mr. Reed was not a party to the same.

The question first presented for ruling is: Was the notice of January 5, 1948, (set out above) a sufficient compliance with Article 8 of the Agreement? And if not sufficient, did the testimony given by Mr. Reed, (as set out above) constitute a waiver of sufficient notice?

The first two communications given Dispatcher Reed are viewed as simply office memoranda and are not sufficient to meet the requirements of Article 8 of the Agreement.

The third notice of January 5th is viewed in a different light, in that, it relates to the investigation being formal in its nature and advised as to his right to representation if he desired. This notice should have placed any normal person on guard, by reason of the seriousness of the matter under consideration, the fixing of responsibility would be the major item of the inquiry. Mr. Reed being in possession of the facts with relation to his part in the series of events which led to the tragic accident should have known better than anyone else as to his need for representation as his own testimony later showed. No specific charge is made in the notice of January 5, 1948. Therefore, it cannot be said to meet the requirements of the provisions of Article 8. Now, the question arises: Did Dispatcher Reed waive the sufficiency of the notice prior to the time he gave his testimony? The hearing was not brief. It was extremely complete and lasted for a period of four days. Dispatcher Reed sat through these four days of the hearing before he was called upon to testify. Many witnesses gave their evidence. The question of the part the train dispatcher's messages played in the movement of the trains prior to the collision had been gone into in great detail. And finally as the last witness to be called Mr. Reed took the stand. At that time he was asked the question:

"Q. Mr. Reed you have been present for the past four days and have heard read the caption of this investigation. Were you properly notified and are you ready to proceed.

"A. Yes sir.

"Q. Do you desire a representative and if so whom.

"A. Do not desire representative."

In view of this long hearing, four days, and the testimony given by a great number of persons; many of whom had testified relative to messages sent by him as train dispatcher; members of the train crews had testified as to their understanding of the messages sent; the engineer of 2nd 9 had testified that he was confused by the messages and understood that the train dispatcher had "meant for him to stick his neck out" owing to the fact that his train was running behind schedule, and that he understood that it was unnecessary for him to pay strict attention to the signals; the result had been 2nd 9 had disobeyed signals and had gone at an excessive rate of speed, under prevailing conditions and crashed into the rear of 1st 9; therefore it must be presumed that as a normal and average person, Mr. Reed, by this time was cognizant of the fact that he was subject to disciplinary action in fixing the responsibility for the accident. After such evidence was in the record he then answered that he had been properly notified and was prepared to proceed and did not desire representation. This is construed to be an effective waiver of any defect in the notice of hearing.

It is a well-established principle in legal procedure, both criminal and civil, that a defect in any notice can be waived. Likewise, this is true in the rules of an agreement, such as Article 8 under consideration herein. It must be presumed that Mr. Reed knew the rules of the Agreement and therefore the provisions of Article 8. Also, he knew the rules pertaining to train dispatcher and the duties of his position. He knew before he took the stand and answered the direct question as to proper notification and as to his willingness to proceed; likewise, relative to representation; that he had violated rules pertaining to his work as train dispatcher, as his evidence later showed by his admission of the violation of certain rules prior to the collision. Therefore, as stated, he waived the defect in notice of the investigation.

On the merits of this case the record is voluminous. There are, of course, inherent in the entire situation degrees of negligence and in reading the record it is presumed that some involved were more guilty than others in the sequence of events leading up to this tragedy. Carrier contends that Claimant set the stage for the collision. Petitioners contend that inability

to understand clear directions on the part of some members of the train crews caused the accident.

It suffices to say that Mr. Reed testified relative to rules violation as follows:

- "Q. Mr. Reed, do you not consider these 3 messages in question as being in violation of rule 851?
"A. According to rule 851, they are a violation, but these messages were only given these two trains for information, * * *."

Conductor Bradley of one of the trains involved, in questioning Mr. Reed as to the purpose of the three messages sent, asked as to what valuable information was intended to be conveyed. Mr. Reed answered:

"I have nothing to say."

As stated at the outset of this Opinion, a review of all the evidence in the record would extend the same to a great length. The pertinent parts of the record and evidence, as shown by the transcript, are considered. By reason of the weather conditions great caution should have been exercised. This was not done. The result was disastrous. Also, as stated, there are degrees of negligence involved. Therefore, no one person's actions can be said to have caused the collision. A combination of acts and events brought about the serious results.

Mr. Reed's evidence relative to violation of the rules pertaining to the duties of a train dispatcher makes impossible the sustaining of his claim. Therefore, the claim is denied for the reasons above stated.

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 claim is denied in accordance with Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1948.