

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

- (a) The Chicago & Eastern Illinois Railroad Company, hereinafter referred to as "the Carrier," violated the currently effective Agreement with the claimant organization, including Article 9 thereof, by its action in dismissing Dispatcher George J. Nixon, Jr., on or about July 30, 1953, as a result of unsustained general charges set out and referred to in a purported investigation held on July 21, 1953.
- (b) The Carrier be required to:
 - (1) Reinstate the individual claimant with seniority and other rights under the Agreement unimpaired.
 - (2) Reimburse him for loss of time as train dispatcher from the date of dismissal until restored to Carrier's service as telegrapher, on or about August 25, 1953.
 - (3) Reimburse him for the difference between what he earned as telegrapher, subsequent to date of restoration to service as such, and what he would have earned as train dispatcher, on all dates upon which he was contractually entitled to perform train dispatcher service, and
 - (4) Clear his record of the unsustained charges.

OPINION OF BOARD: Claimant Nixon was dismissed from service as a train dispatcher on July 30, 1953. He held seniority as both a dispatcher and a telegrapher and sought reinstatement with his rights in both crafts. On August 18, 1953, he was reinstated as a telegrapher, but did not accept the same until October 15, 1953. On September 29, 1953, he was offered reinstatement as a dispatcher as Carrier states on a leniency basis conditional upon his waiving all time claims for the period of his dismissal. Claimant rejected the offer. The discipline assessed arose out of an incident occurring July 9, 1953.

It is contended in Claimant's behalf that at about 5:12 A. M. on July 9, 1953, Dispatcher Nixon, whose tour of duty was 11 P. M.-7 A. M., issued train order No. 9 authorizing the movement of northbound freight No. 56 against the current of traffic on southbound main track. The order was as follows:

"Order No. 9—

"No. 56, Hillsdale, Cayuga and Operator.

"No. 56 Engine 231 has right over opposing trains on southward track Hillsdale to Brewer."

That Brewer is the designation of Carrier's freight yard at Danville. The distance from Hillsdale to Brewer is approximately thirty-one miles and Cayuga is an intermediate station approximately fourteen miles from Hillsdale and seventeen miles from Brewer. The operator at Hillsdale received and delivered train order No. 9 to Train 56 at that point, lined up the interlocking cross-over between the two main tracks, permitting Train 56 to cross over and proceed on the southward track without stopping. The operator at Cayuga received a copy of train order No. 9. The entire operation was set up on account of Crew of Train 56 had been on duty, and the fact that northward passenger trains Nos. 8 and 18 would interfere with an expeditious movement of Train 56, Hillsdale to Brewer with possible delay account of Hours of Service Law. While crew of No. 56 was setting out cars at Cayuga, Nixon instructed operator at that point to figure on putting No. 56 back on the northward main track to Brewer Yard. After No. 18 passed Cayuga at 6:40 A. M., the operator lined up the interlocking crossover permitting No. 56 to use the northward main track, Cayuga to Brewer Yard. Some time later Nixon called the operator to copy a train order for No. 56 to proceed on the northward main track and was informed that No. 56 was moving, and the order was not issued; the record shows No. 56 as having departed at 6:43 A. M. That the record also shows that Nixon, although his tour of duty ended at 7:00 A. M., was relieved at approximately 6:45 A. M. and the record does not show that train order No. 9 was ever cancelled or annulled.

In view of these facts it is Petitioner's contention that Carrier did not comply with the requirements of Article 9 of the Agreement, in that neither a proper hearing was held and no precise charges were given Claimant prior to the alleged hearing held on July 21, 1953, and that Carrier has failed to produce any competent evidence wherein the four operating rules, the basis of disciplinary action taken, were violated by Claimant. Cited in support of the claim are Awards 2941, 5793 and 6250.

On behalf of Respondent Carrier it is stated Claimant was dismissed for violating Operating Rules 220, 836, 837 and Form D-R. That by reason of Claimant's acts he should have known the operator was confused and it was his duty to make immediate inquiry which he did not do. That when Claimant did not issue the necessary order to return the train to the northward track when a dangerous situation had been created, but instead merely instructed Telegrapher Cook to permit No. 56 to depart and then signing off and not reporting the situation to the incoming dispatcher makes disciplinary action necessary. That it can well be concluded that he knew the train had gone without orders from Cayuga and he knew he had confused the operator and had put the train on the wrong track. That on the matter of hearing credibility of Claimant's evasions and excuses are for the hearing officer's consideration and in the absence of proof that no arbitrary action resulted from the hearing it is not proper for determination here. Citing Awards 6620, 6430, 6103, 6598 and others.

In view of the circumstances shown in this case we feel that the offer of Carrier to reinstate as a dispatcher was fair and should have been accepted by Claimant. Also that there was a substantial compliance with the hearing rules and no prejudice resulted against Claimant as contended in (a) of the

claim. Therefore, (b) (1) of Claim is sustained, (b) (2) and (b) (3) denied and (b) (4) is 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 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 claims will be disposed of in accordance with the Opinion.

AWARD

Claims disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.