

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(a) The action of the Chicago & North Western Railway Company (hereinafter referred to as the "Carrier") was arbitrary and capricious and wholly unwarranted when the Carrier denied Keith D. Shreffler the right and opportunity to perform compensated service as train dispatcher to which he was contractually entitled on April 3, 4, 5, and 6, 1954, and in placing a disciplinary entry against his service record.

(b) The Carrier be required to compensate Train Dispatcher Keith D. Shreffler for time lost account improperly held from service on the above specified dates, and

(c) The Carrier be required to clear Train Dispatcher Keith D. Shreffler's record of the disciplinary entry here in reference.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date September 16, 1950. Copy of said Agreement is on file with this Division and is incorporated into this submission the same as though fully set out herein.

For ready reference Rule 24, the discipline rule, is here quoted in full:

"(a). Train dispatchers will not be demoted, disciplined, or dismissed without a proper hearing, as provided in the following paragraphs. Suspension pending a hearing will not be deemed a violation of this rule.

(b). A train dispatcher against whom charges are preferred will be granted a fair and impartial hearing before the superintendent or his representative within five days after notice, or within five days after suspended from service, whichever is earlier. Such notice will be in writing and will specify the precise charge. The train dispatcher will have the right to be represented by a committee of train dispatchers or by one or more duly accredited representatives; and will also be given reasonable opportunity, not to exceed five days, to secure the presence of representatives and any witnesses. The train dispatcher and his representative or representatives will

submits that there was no reason why such words should be included in the message and that their inclusion could have only been made for the sole purpose of antagonizing the recipient of such message and at the same time publicly deriding the engineer to whom it was addressed.

In support of the carrier's position, it calls the attention of this Board to First Division Award No. 13766 involving the assessment of thirty demerits against the record of Brakeman Estes for profane and abusive language to a waitress in an eating place owned and operated by the carrier. In that case, as here, the claimant admitted the use of the language complained of. That case, as this case, involved the application of rule K of the Rules for the Government of the Operating Department. In denying the claim for removal of the demerit marks, the First Division said:

"It reflected discredit upon carrier's employes and was a potential source of annoyance to its patrons, both of which eventualities Rule K is justly designed to prevent. We see no basis upon which to set aside the mild discipline assessed by the carrier."

Were this a case where the carrier had dismissed the claimant as a result of the language used in the wire, it might be argued by the employes that the carrier had unduly magnified the effect of the wire actually sent. The Board's attention, however, is called to the fact that this is not a dismissal case, but is a claim for the removal of demerit marks, plus claim for four days' pay held out of service pending investigation. As indicated in Award 13766, the discipline assessed was in fact mild. This is particularly true in view of the fact that there is no question of the claimant's guilt, which was admitted during the course of the investigation.

The carrier therefore submits that this claim should be denied in its entirety.

All information herein contained has previously been submitted to the employes in handling this case on the property and is hereby made a part of the particular question here in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: A review of the record leads to the conclusion that the disciplinary action taken is excessive in the light of the dereliction committed. In view of this we feel that the assessing of 30 demerits against Claimant's record is too severe and the same is hereby removed and in lieu thereof a formal reprimand is hereby directed to be placed against Claimant's record.

The severity of the action taken further requires payment of claim dates, April 3, 4 and 5, 1954. However, claim for April 6, 1954 is declined.

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 Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was violated.

AWARD

Claims disposed of in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.