

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

(1) Carrier violated the terms of the agreement when, as a result of a hearing held on May 21, 1953, without proper notice, and which was neither fair nor impartial, it assessed the record of D. N. Cuccherini one reprimand, and

(2) Cuccherini's record shall be cleared of said reprimand, and

(3) Cuccherini shall be compensated equivalent to five (5) hours' pay at the overtime rate (time consumed away from his home attending the hearing on rest day) or \$13.98, plus forty-six (46) car miles at seven (7) cents per mile, \$3.22, or a total of \$17.20.

OPINION OF BOARD: On May 16, 1953, Claimant D. N. Cuccherini was working the first shift position at New Milford, Pennsylvania, as part of a rest day relief assignment. While operating an electric interlocking machine to permit passage of train No. 6, Cuccherini struck one of the levers in the machine which caused it to display an incorrect signal. He immediately corrected the error by placing the lever in the position required to take advantage of a 45-second time release element, and then displayed the proper signal. The train was not stopped, although it proceeded on a "caution" rather than a "clear" signal for a period of time, the length of which is not exactly clear from the record.

If the corrective action had not been taken at once, a longer time release element of 4 minutes and 40 seconds would have been in effect and the train would have been stopped. Claimant Cuccherini promptly reported the incident to the dispatcher and explained how he had corrected his error so as to take advantage of the 45-second time release.

On the same day, May 16, 1953, Carrier's Superintendent sent the following message to Claimant:

"Arrange to report to Asst. Supts. Office, Scranton, 9:00 A. M., Monday, May 18, for hearing concerning delay of No. 6 at New Milford today for signal. You may bring representative and witnesses if desired.

(Sgd.) W. G. Dorsey"

Claimant requested postponement, stating that he would be unable to have representative available on May 18. On May 18 he received further notice to appear at 9 A. M., Thursday, May 21. (Employees' Exhibit No. 7). The hearing was thus held on one of Cuccherini's rest days. A transcript of the hearing was made and appears in the record. Subsequent to the hearing, a reprimand was assessed against Cuccherini and made a part of his record, May 28.

On June 13, 1953, the General Chairman appealed to the Assistant General Manager-Personnel, requesting that the reprimand be removed and that Cuccherini be compensated for time consumed and expenses involved in attending the hearing. (Employees' Exhibit No. 4). Conferences were held in an effort to resolve this matter, but since these efforts failed, the dispute is properly before us.

The first point of contention is that the notice sent to Cuccherini prior to the hearing was not sufficiently definite to comply with the requirements of Article 10 (a). This notice, quoted above, was sufficiently clear to make known to Claimant that he was to be questioned relative to the delay on May 16, of train No. 6, and on that aspect of the delay which pertained to the signal at New Milford. We think that little doubt could have been left in Claimant's mind as to what he was to be questioned about. Therefore, we cannot conclude that his notice was inadequate or improper; however, it was less precise than the charge later entered at the hearing.

The second point complained of is that Claimant Cuccherini was not given a fair hearing, in that he and his representative were not allowed to introduce certain factual data for the record which might have disproved Carrier's charge that he had been responsible for delaying No. 6 for as much as 4 minutes on May 16, 1953. This is a serious charge and one which we cannot pass over lightly. The record speaks for itself.

Assistant Superintendent J. F. Scanlon was in charge of this investigation. He opened it by asking Mr. Cuccherini if he had been properly notified. When Claimant's representative sought to put in the record at this point the actual notice received by Cuccherini, Mr. Scanlon refused to accept that as a proper answer to his question and pressed for an oral reply from Claimant. (Tr. p. 1). When the latter acknowledged only that he had received notice to appear at this time and this place, Mr. Scanlon turned to Chief Train Dispatcher B. F. Edwards and asked him to state for the record the purpose in calling Cuccherini for the hearing. After an exchange between General Chairman Slocum and Mr. Scanlon as to whether the notice, as written, was to be made a part of the record, Scanlon asked Edwards to "state the charge, please." Edwards answered as follows: "Train No. 6 on May 16, was delayed 4 mins. due to Mr. Cuccherini not properly lining up the signal for that train which is in violation with Rule 613." (Tr. p. 1). Following this, the written notices which had been sent to Cuccherini were entered in the record.

We note in passing that the charge as stated by Mr. Edwards was not the same, and was more specific, than that addressed to Cuccherini prior to the hearing.

After Mr. Scanlon completed his questioning of Cuccherini, Mr. Slocum was told that he could ask questions. (Tr. p. 5). The following exchange occurred:

"Q. Mr. Slocum to Mr. Edwards—there is a known slow order at Conklin Little Creek Bridge to 10 MPH?

A. Yes.

Q. What is the normal lost time on schedule trains such as No. 6 each day?

Objection by Mr. Scanlon—that question has nothing whatever to do with this case.

Q. Mr. Slocum to Mr. Edwards—Is it not a matter of record that the train sheet does indicate that they are normally losing from 5 to 7 minutes on this reduced speed, not only eastbound but westbound too?

Objection by Mr. Scanlon—I object to that question—make no answer Mr. Edwards.

Q. Mr. Slocum to Mr. Edwards—in view of this No. 6 on this date left Binghamton one minute late and arrived Scranton approximately 4 minutes late. Normally in days previous and days since they have passed New Milford with clear block approximately 5 to 7 minutes late—assuming you will be instructed not to answer that question, however, it is relevant, are you familiar with release time elements of the machine at New Milford?

A. Yes.

Q. What is the release time?

A. 45 seconds.

Q. No. 6 did not stop?

A. No.

Q. No. 6 turned in a message at Scranton to the effect that they were delayed 4 mins. at New Milford for signal?

A. No sir.

Q. What delay did he turn in?

A. Delayed both for slow order at Conklin and for signal at New Milford.

Q. Will the Carrier object to reproducing that delay report in the record?

A. Mr. Scanlon—to Mr. Edwards—do you have the message?

Mr. Edwards said that he thought there was a copy in the file but could not find it.

Mr. Slocum said—In view of the fact that you have expressed you cannot locate the message—however, having stated that No. 6 did go to Slateford Junction on time we dispute the expression that No. 6 was delayed 4 minutes at New Milford under the normal slow order running procedure of No. 6. For instance, on the following day No. 6 with everything clear left Binghamton 4 minutes late and passed - - -

Objection by Mr. Scanlon—I object to that statement.

Q. You refuse to let us put it on the record.

A. Yes—I am not going to fill up the record with a lot of irrelevant stuff.

Q. Mr. Slocum—if you have any questions to ask Mr. Slocum, ask them but we are not going to fill up the record with your thoughts and quotations that have nothing whatever to do with the case.

Q. Mr. Slocum to Mr. Cuccherini—will you state for the record the time on May 17, that No. 6 left Binghamton?

Objection by Mr. Scanlon—I object to that question. We are talking about May 16th and not May 17th.

Statement By Slocum—I am asking for 10 minutes recess to confer with the Superintendent.

Not Granted (by Mr. Scanlon)

Statement by Mr. Slocum—we have nothing further to say."

(Tr. pp. 5-6).

We search the record in vain for proof of the Carrier's charge that Mr. Cuccherini was responsible for delaying No. 6 as much as four minutes on May 16, 1953. Whether Cuccherini's admitted error delayed the train 45 seconds, a minute, two minutes, or four minutes, is not established. The hearing developed into a heated argument first over Mr. Scanlon's refusal to permit Mr. Slocum to get into the record information to the effect that No. 6 was no later than usual at that point in its run on May 16; and second, over the question as to whether the hearing had been fairly conducted. (Tr. pp. 6-11).

That Claimant made an error, he acknowledged. That this error caused some delay to No. 6 on May 16 has not been denied. That this train was due to pass Cuccherini's station at 1:28 P.M. and actually went by at 1:35 P.M. Claimant stated for the record. (Tr. p. 4). However, the record also indicates that No. 6 was delayed on that date for other causes than Cuccherini's error. In fact it appears from the record that for several days No. 6 had been passing this point a few minutes late and continued to do so after May 16.

Carrier's representative at Cuccherini's hearing was so intent upon keeping out of the record evidence that would show that No. 6 was regularly running through New Milford five or more minutes late that he failed to get into the record adequate proof of the charge which Mr. Edwards stated. The latter specifically charged Cuccherini with causing No. 6 to be delayed four minutes on May 16. (Tr. p. 1). Yet when asked if No. 6 turned in a message at Scranton to the effect that it was delayed 4 minutes at New Milford for signal, his reply was "No sir". When asked what delay report was turned in, he admitted that the report said "Delayed both for slow order at Conklin and for signal at New Milford". When asked if he could produce this delay report for the record, Mr. Edwards said he thought there was a copy in the file but he could not find it. (Tr. p. 6).

The pertinent provisions of the Agreement are Paragraphs (a) and (f) of Article 10, as follows:

"(a) An employe will not be suspended (except suspension pending hearing), discharged, or otherwise disciplined without a fair and impartial hearing which shall be held within ten days of the date on which the Superintendent first had knowledge of the offense for which suspended, discharged or disciplined. **At a reasonable time prior to the hearing the employe will be apprised in writing the precise charge against him.** The employe shall have reasonable opportunity to secure the presence of representatives and witnesses. . . . (Emphasis added.)

"(f) So far as practicable hearings or investigations will be conducted during the regularly assigned hours of the affected employe, in which case no deductions in pay will be made. Employes instructed to attend hearings or investigations on days not working, or outside of regularly assigned hours, on matters for which they are not held responsible will be paid on a call basis for time consumed and in addition will be allowed actual necessary expense incurred."

(Emphasis added.)

Claimant was charged with delaying train No. 6 four minutes on May 16, 1953. There is no proof in the record that he was responsible for a delay of such duration. He and his representative were denied the right to establish what we think was pertinent evidence in this case. The one way in which it might have been possible to establish with reasonable accuracy just how much or how little delay Cuccherini's error amounted to on the day in question was ruled out as irrelevant. It was known that there was a slow order at Conklin Little Creek Bridge, which caused this and other trains to move at a reduced speed for some distance. The establishment of an approximate amount of time for these delays would certainly have thrown much light on the subject at hand in this investigation. To deny Claimant's right to have such evidence considered was to deny him a full opportunity to be heard. Thus we cannot conclude that Carrier proved the charge it stated against Cuccherini. Nor can we conclude that the hearing was conducted with reasonable fairness.

The claim must 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 Carrier did not establish proof of the charge as stated at the opening of the hearing.

That Claimant was denied the right to enter pertinent evidence for the record and was thus denied his rights under Article 10 (a) of the Agreement.

That Claimant was required to appear on his rest day and thus incurred expenses and loss of personal time.

AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1955.