

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE NEW YORK CENTRAL RAILROAD (Eastern District)
(except Boston Division)

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

(a) The action of the New York Central Railroad Company hereinafter referred to as "the Carrier" was arbitrary, unjust, and in abuse of its discretion, when on or about September 20, 1955, it disqualified Mr. R. S. Howell, of its Syracuse, New York train dispatching office, for further service as train dispatcher, upon charges unsustained in the record.

(b) The Carrier shall now reinstate Claimant R. S. Howell to service as train dispatcher with all seniority and other rights unimpaired, and shall compensate him for net wage loss suffered as a result of the Carrier's unwarranted action.

OPINION OF BOARD: The following is taken from Employees' oral presentation to this Board:

Question asked of Claimant Howell:

"Q. After you issued this 31 Order to the Operator at SS-33, did you make any kind of a check to see if he took the necessary precautions to protect the provisions of that 31 Order?

"A. The only check that I had was that Mr. Love gave me the SD for the 31 Order, which is the usual procedure for a 31 Order.

"Thus, when Operator Love informed Mr. Howell that BF-1 on track No. 3 had hit the bell, there being a 'hold' on Track No. 3 and it being the decision that BF-1 was to use the West Shore, the answer 'Put him to the West Shore' was proper. There is nothing in the statement 'Put him to the West Shore' that instructed Operator Love to do so in violation of any of the operating rules.

"When Operator Love was instructed to 'Put him to the West Shore' Rule 317-B restricted him (Love) from admitting a train to a block occupied by an opposing train and rule 221-C restricted him from restoring the 'Stop' signal to proceed until Order No. 205 had been delivered. Therefore, Claimant Howell had every right to rely upon the operating rules and Operator Love who had been delegated this responsibility by the operating rules and Train Order No. 205.

"Whether or not Claimant Howell momentarily overlooked eastward extra 1066-3321 deserves no consideration by your Honorable Board because he had previously protected the movement in accordance with the rules and that protection had not been lifted.

"Near bottom of page 8, Carrier says:

" 'By overlooking the fact that eastward Extra 1066-3321 was en route from Oakfield to SS-33 Claimant Howell violated Rule 807,'

"and then quotes from page 5 of Carrier's Exhibit 3 where Claimant Howell answered 'yes sir' to the question, 'Did you violate Rule 807?'

"Regardless of Mr. Howell's answer to the question, which Petitioner is sure he did not understand when giving such answer, let's examine the rule and see just where or what part of this rule he violated. For convenience we will quote the rule again:

" '807. They (train dispatchers) will issue orders governing the movement of trains, in accordance with the rules; record the movement of all trains and important incidents affecting the movement of traffic.'

"In the instant case, the rules require that the movements of eastward trains between Oakfield and SS-33 be by train order under manual block rules. Rule 807 required that the train orders be issued by the train dispatcher who is to record the movement of all trains and important incidents affecting the movement. Rule 317 (B) required the signalmen (Operators) to manually block the trains. Claimant Howell issued the necessary train orders when he issued Train Order No. 205 and he recorded the movement when the Operator at Oakfield reported extra 1066-3321 east leaving Oakfield at 6:40 P.M. Thus, he completely complied with the provisions of Rule 807 and, regardless of any admission he may have made in the investigation, the Carrier has not and cannot show where Claimant Howell violated Rule 807 or any other operating Rule. There is nothing in Rule 807 relating to overlooking a train after an order has been issued. It is true that a train dispatcher may overlook a train when issuing a train order and thereby set up a disastrous condition, but that is not true in the instant case. Rule 807 was **not** violated. (Emphasis theirs.)

"The one and only cause of this accident was the failure of Telephoner-Leverman Love to comply with the rules protecting the movement which he readily admits * * *."

In argument presented to the Referee by Board Member representing the Organization, great stress was laid on its assertion that Claimant Howell did

not violate Rule 807; that when he told Telephoner-Leverman Love to "put him (train BF-1) to the West Shore" he was just "informing Telegrapher Love that the approaching train would be operated via the 'West Shore'"; and that he was thus not issuing an order within the meaning of Rule 807. It was further argued on behalf of the Organization that in view of the requirements of the Carrier's rules governing the effectiveness of train orders once issued, there can be no doubt that train order No. 205, as issued by the Claimant Train Dispatcher, was and remained in effect at the time the westward train here involved passed Signal Station S-33 without having received such order. Claimant had not superseded Train Order 205, Organization asserted.

In analyzing Claimant's telephoned instructions to Telephoner-Leverman Love to "put him to the West Shore" we have, then, Organization's assertion as to what he meant.

From the transcription of the investigation we have Claimant answering these questions:

"Mr. Bowes to Mr. Howell

"Q. According to your previous testimony you stated that you requested Operator Love at SS-33 to report to you when a westbound train hit his bell. Is that correct?

"A. Yes.

"Q. Whereupon when train on track 3 hit his bell he complied with your request. Is that correct?

"A. Yes.

"Q. When you told him to put this train to the West Shore, did you mean for him to do it immediately?

"A. Yes sir."

By his own admission, as quoted from the transcript, Claimant Howell admitted that the intent of his conversation with Telephoner-Leverman Love was that he (Love) should "put him (Train BF-1) to the West Shore" and do it "immediately." Love did just that, and the ingredients of a head-on collision were thus joined.

We also have this from the transcript, the question being directed to Claimant Howell:

"Q. I will read you Rule 807 of the Book of Rules for the Government of the Operating Dept. which specifically pertains to Train Dispatchers. (Read Rule). Did you violate Rule 807?

"A. Yes sir."

Claimant, by his own admission at the investigation, as reflected by the above quotations from the transcript, concedes his own guilt in violating Rule 807, upon which Carrier predicated its disciplinary action in disqualifying Claimant as a dispatcher.

Because we cannot find any evidence in this record that Carrier's action was arbitrary, unjust or in abuse of its discretion, a denial award will be made.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.