

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(a) The action of the Baltimore and Ohio Railroad Company, hereinafter referred to as "the Carrier" was arbitrary, unjust, and in abuse of its discretion, when on or about April 9, 1956, it demoted Mr. R. E. Brown, of its Akron, Ohio train dispatching office, from service as train dispatcher to that of Operator, upon charges unjustified in the record.

(b) The Carrier shall now reinstate Claimant R. E. Brown 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 Carrier's unjust action.

(c) A joint check of the Carrier's record shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine the net wage loss required by paragraph (b) of this claim.

OPINION OF BOARD: The facts are not in dispute and need not be repeated here.

This is a discipline case where the Carrier demoted claimant, an extra train dispatcher, for his failure to annul a train order while on duty as a main line dispatcher in the Akron, Ohio, office of Carrier.

Claimant was accorded all rights and privileges under the discipline rule of the contract. That the investigation was properly conducted and that he was given a fair and impartial hearing was conceded by claimant.

Here the claimant admitted full responsibility for his mistake and the Organization throughout the progress of the claim on the property sought reinstatement of claimant on a leniency basis.

The rule that this Board has no authority to order reinstatement on a leniency basis is well established. It is aptly stated in Award 6085 (Referee Whiting):

"There is a vast difference between the correction of an excessive penalty and reinstatement on a leniency basis. We can correct an excessive penalty because the imposition of such a penalty is a violation of those provisions of the agreement which are adopted to protect employees from arbitrary, capricious or discriminating discipline by the carrier. Reinstatement on a leniency basis is a discretionary remission of an appropriate penalty. We do not remit penalties on a leniency basis because we have no power or right to exercise managerial discretion."

The facts of record clearly support the finding that the Organization chose to treat this case on the property as one requiring reinstatement on a leniency basis and was precluded from making an appeal on the merits because of claimant's admission of guilt. Reinstatement on a leniency basis is solely within the managerial discretion of the Carrier.

The claim, therefore, must be dismissed.

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1958.