

Award No. 9033  
Docket No. TE-9747

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Roscoe G. Hornbeck, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that:

1. J. G. Benton, regularly assigned Block Operator at Glen Block Station, Richmond, Indiana, was improperly dismissed from the service in an arbitrary and unreasonable manner on August 9, 1956 for the alleged improper handling of a train order on July 18, 1956.
2. The claimant was charged with an offense which did not warrant the severe discipline imposed.
3. That all persons involved were not at the trial, thus not being accorded the right and privilege of examining all witnesses so that all the pertinent facts could be established.
4. That on appeal from discipline imposed, he was denied his right to return to service.
5. Because of this unreasonable action by the Carrier, it is requested that Mr. J. G. Benton be restored to service with seniority unimpaired and that he shall be reimbursed for all monetary losses sustained as a result of the improper dismissal of the claimant, retroactive to July 18, 1956.

**OPINION OF BOARD:** Claimant, a regularly assigned Block Operator at Glen Block Station, Richmond, Indiana, was dismissed from the service of the Carrier after hearing on a charge of failure in "performance as a Block Operator, Glen Tower, Richmond, Indiana on July 18, 1956 in the handling of '19' Train Order No. 47 (Violation Rule 221)", upon his plea of guilty at the hearing on the charge. After this plea Mr. Benton was asked, "Is there anything further you care to add to your trial statement at this time?" he answered, "The only thing I have to say is that I have tried to per-

form my work in a satisfactory manner, and I am sorry I failed in this instance, and can assure you that it won't happen again."

The claim asserts that (1) Mr. Benton was improperly dismissed from the service in an arbitrary and unreasonable manner for the alleged improper handling of a train order on July 18, 1956, that (2) the charge did not warrant the severe discipline imposed, that (3) all persons involved were not at the trial, thus not being accorded the right and privilege of examining all the witnesses so that all pertinent facts could be established, that (4) on his appeal from the discipline imposed, he was denied his right to return to service, and that (5) because of the unreasonable action by the Carrier, it is requested that Mr. Benton be restored to service with seniority unimpaired and reimbursed for all monetary loss sustained as a result of his improper dismissal.

The Organization in its submission complains "that all persons involved were not present at the trial, thus the employe was not given a fair opportunity to question persons directly involved in the incident so that all pertinent facts could be established. That members of the crew of Trains No. 4 and No. 20, alleged not to have received a copy of Train Order No. 47, did not testify at the hearing or present any statement whatever. It is said, "How then," (in the absence of the members of the crews) "could it be absolutely determined that Train Order No. 47 was not received by either of these crews at Richmond Station." Complaint also is made that a promise by the Carrier's representative to provide the names of the crews on the trains involved was not met.

Suffice to say, that by Mr. Benton's plea of guilty he admitted all of the material elements of the charge against him. Even if the Carrier had failed in its proof, which is not the fact, the plea of guilty removed the necessity of proof of the charge that Mr. Benton had violated a safety rule of the Carrier in the particulars alleged.

The only question before this Board on this submission is whether or not the dismissal of Mr. Benton was too severe for the offense of which he was properly chargeable. In view of the character of the offense did the Carrier act in an arbitrary or capricious manner or abuse its discretion in dismissing claimant, assuming that this was the first offense with which he had been charged and that he theretofore had a good record with the company.

The first and most vital obligation of a Carrier, which must be effectuated by the faithful performance of their duties by its employes, is to protect the lives and property of its patrons. It is chargeable at law with exercising the highest degree of care in the operation of its trains; failing to exercise that care it may be held responsible by any process available to one who suffers by reason of such failure. It cannot avoid responsibility for the act of any employe within the scope of his duty.

In the observance of the plain intent of a rule the employe may not place another interpretation upon it which he is of opinion may make it more effective. Here the order had been issued, the purpose of which was obvious, and the obligation of the Block Operator was not met until he has made certain that the order had been delivered to the employe or employes to whom addressed.

By Mr. Benton's failure to act those in charge of the trains which passed Glen Tower were not informed of a condition ahead which was deemed

dangerous unless precaution be taken to slacken the speed of the trains as set forth in the orders. It was but good fortune, that notwithstanding the uninterrupted speed with which the trains proceeded, no untoward results occurred. No valid excuse or reason for failure of claimant to act as his plain duty required appears in the record. What possible advantage could have resulted to the claimant if the crews on the train affected had testified is difficult to find. Nor did Mr. Benton do more than ask the names of the crew on the trains and did not express any purpose to produce their testimony.

The Carrier cannot be said to have denied Mr. Benton any rights to which he was entitled, or which conceivably could have benefited him, nor did it act in an improper or unauthorized manner in dismissing him from its service.

**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 no violation of the rules is shown.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.