

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(a) The Chicago & Eastern Illinois Railroad Company hereinafter referred to as "the Carrier" violated the currently effective Agreement between the parties to this dispute, particularly Article 9, when Assistant Chief Dispatcher W. M. Fulton, Trick Train Dispatchers A. G. Neel and D. W. Young were suspended from service fifteen (15) working days without pay as a result of deficient and unsustained charges, such action being unjust, unreasonable, arbitrary and in abuse of the Carrier's discretion.

(b) Carrier shall now compensate claimants as follows:

1. Mr. W. M. Fulton, fifteen (15) days pay at Assistant Chief Dispatchers' rate and for any wage loss sustained while attending investigation held on March 12, 13 and 14, 1958.
2. Mr. A. G. Neel, fifteen (15) days pay at pro rata rate and for any wage loss sustained while attending investigation held on March 12, 13 and 14, 1958.
3. Mr. D. W. Young, fifteen (15) days pay at pro rata rate and for any wage loss sustained while attending investigation held on March 12, 13 and 14, 1958.

OPINION OF BOARD: There was a head-on collision between a passenger train and an engine with a caboose on the Chicago & Eastern Illinois Railroad near Danville, Illinois. The accident occurred on the Danville Subdivision between Brewer and Yard Center, Illinois. Danville Station 3.3 miles north of Brewer is located within yard limits. The north and south yard limits are located 1.19 miles north and 4.81 miles south of the station.

A train dispatchers' office is located on the west side of the main track approximately 1.51 miles south of the station. At Brewer, several yard tracks parallel the main tracks on the east and west. The accident occurred within yard limits on the southward main track at a point 2.25 miles south of the station at Danville. The accident occurred on a curve.

On the day of the accident engine 206 road switcher type headed north pushing a caboose and entered the southward main track at the diesel electric Shop-lead track switch. It proceeded southward and collided with train No. 94, 2.25 south of the Danville Station.

No. 94 was a northbound first-class passenger train. Its crew received copies of train order No. 14 at Cayuga, 14.6 miles south of Brewer. This train order stated:

"Order No. 14. . . . Jan 7, 1958

DH C&E Opr, All southward trains SD	RS 248 AM
BW C&E Opr, All southward trains SD	JW 248 AM
YD C&E Ydmaster, Engs starting	RN 249 AM
CU C&E Opr, No. 94	19D D 250 AM

No. 94 Eng 1609 has right over opposing trains on southward track Cayuga to Danville.

JTW"

The train passed Cayuga at 3:01 A. M., 44 minutes late, crossing from the northward main track to the southward main track, passed signal 54 which showed Slow-Clear, passed Walz, the last open office at 3:18 A. M. and collided with 206, while going 37 miles per hour.

At the time of the accident an assistant chief train dispatcher, a south-end train dispatcher and a north-end train dispatcher were on duty at the dispatchers office. First class trains operating between Danville and Evansville, 164 miles south of Danville are under the jurisdiction of the south-end train dispatcher, Young. Freight trains operating north of Brewer are under the jurisdiction of the north-end train dispatcher, Neel. About 2:40 A. M., the yard-master at Brewer requested the assistant chief train dispatcher to operate No. 94 over the southward main track against the current of traffic between Cayuga and Danville to prevent a delay to another train. The assistant chief dispatcher then had the south-end train dispatcher Young issue a train order No. 14 to that effect. Train order No. 14 was addressed to operators at Cayuga, Walz and Danville, the conductor and engineer of No. 94 and the yardmaster, engines starting at Brewer. The order was completed at 2:50 A. M. Movements of engines operating on the main tracks between the repair shop track and Brewer Yard are governed by rules pertaining to movements within yard limits.

On the day of the accident a crew was called to report for duty at 3:00 A. M. to operate an extra freight train from Brewer Yard. Engine Unit 206 was to haul this train. The road foreman of engines entered the dispatchers office and said hello to the dispatchers. Three or four minutes later at 3:00 A. M. the conductor entered the dispatchers office, said hello to the dispatchers checked the register, read his work messages and left with the road foreman of engines. Nothing was said to them that train No. 94 was

authorized to operate over the south main track. Engine 206 entered the south main track about 3:16 A. M. Train No. 94 passed Walz at 3:18 A. M.

After receiving train order No. 14 the operator at Walz "lined for 94 to use the southward track." After a short time he went down to put coal in the furnace and when he came back the north-end telephone was ringing. The north-end dispatcher Neel asked him about the location of No. 94 and he said it was going by then. Shortly after No. 94 and Engine 206 collided, the north-end train dispatcher Neel testified at the hearing that he also tried to contact No. 206 by radio but was unable to reach it.

The I.C.C. Railroad Accident Investigation Report No. 3796 states:

"Examination of the tapes removed from the speed-recording devices of diesel-electric units 16 and 1102 after the accident occurred disclosed that the speed of No. 94 was reduced from approximately 65 miles per hour to 40 miles per hour in the vicinity of the south yard-limit sign by a service brake application. The speed of the train then decreased gradually from 40 miles per hour to 37 miles per hour throughout a distance of 2.2 miles to the point of accident. It is evident that the train was operated at excessive speed through the interlocking and that it was not being operated in such manner that it could be stopped short of a train or obstruction, as required by the rules, when the collision occurred.

Cause

"This accident was caused by failure properly to control the speed of a first-class train operating against the current of traffic within yard limits."

Rule 93 provides:

"Yard limits are designated by special instructions in the timetable.

"Within yard limits, the main track may be used clearing first class trains when due to leave the last station where time is shown, but not less than five minutes. In case of failure to clear the main track, protection must be given as prescribed by Rule 99. Protection against second class, third class, extra trains and engines is not required.

"Within yard limits, second class, third class, extra trains and engines must move prepared to stop short of train, obstruction or switch not properly lined.

"Within yard limits, when running against the current of traffic, or on a portion of two or more tracks used as a single track, all trains and engines must move prepared to stop short of train, obstruction or switch not properly lined."

At the hearing to investigate the cause of the accident, the following rules were read to D. W. Young, the south-end dispatcher:

"Q — I would like to read for the record General Notice:

"Safety is of the first importance in the discharge of duty.

"Obedience to the rules is essential to safety.

"To enter or remain in the service is an assurance of willingness to obey the rules.

"The service demands the faithful, intelligent and courteous discharge of duty.

"To obtain promotion, ability must be shown for greater responsibility."

First paragraph of rule 700:

"Constant presence of mind to insure safety to themselves and others is the primary duty of all employees."

Rule 836:

"Train dispatchers will direct the movement of trains, issue train orders and messages in a clear and concise manner so that there may be but one interpretation and will transmit and record them as prescribed by the rules. They will guard against dangerous conditions in train movements, and improper or unsafe combinations in train orders.

"They will make the various records required and observe special instructions, including 'Instructions to Train Dispatchers'."

"Rule 836:

"Train dispatchers must report immediately to the chief train dispatcher any irregularity relating to the movement of trains or the handling and execution of train orders."

"Rule 108:

"In case of doubt or uncertainty, the safe course must be taken."

There is no other indication in the transcript of the hearing that this dispatcher was charged with violation of any other rules.

The same rules were read to A. C. Neel the north-end train dispatcher and no others. This witness was asked if he had complied with the five rules and he said he had. The same rules were read to the assistant Chief Dispatcher (and another rule not relevant here) and he said he had complied with them.

The Organization first contends that there was no fair and impartial hearing because a hearing contemplates a charge having been assessed and the notice to claimants requested them to appear for an investigation for the purpose of developing the cause and responsibility for the accident.

They also claim that the Company violated the rule that the claimants "shall be advised in writing of the precise charge at the time he is notified to appear at the hearing." Article 9(b) of the Agreement. Although the claimants were not precisely charged as required by Rule 9(b), numerous awards of this Board have held that the claimants waive their objection to this procedural defect by appearing and testifying without making a timely protest. Award No. 4781, 8502, 8488. The same is true as to the use of the word "investigation" in the notice to claimants instead of the word "hearing". Award No. 8488, 8502. By the same token, the Carrier cannot allege violations of operating rules before the Board that it did not press at the investigation.

The rules relied upon by the Carrier at the investigation are general rules of safety. It appears that since both train No. 94 and Engine 206 were within yard limits, the operating rule of the railroad that was applicable was Rule 93. At the investigation of the accident, Mr. Cottingham, Chairman of the Brotherhood of Railroad Trainmen asked Mr. Warren, chief investigating officer for the Carrier:

"Q — Mr. Warren, as company interrogating officer of this investigation, this raises a problem in my mind and the question is simply this: does the carrier recognize any obligation with these road engines and cabooses going from Oaklawn to Brewer and if so, who is the proper qualified official to answer that question at this time?

Mr. Warren — I would like to ask Mr. Dowdy, Chief Train Rule examiner, to answer your question as to the method of the operation.

Mr. Dowdy — The Carrier provides Rule 93 to protect movements such as this. Third paragraph says 'Within yard limits, second class, third class, extra trains and engines must move prepared to stop short of train, obstruction or switch not properly lined.' That rule gives them authority to make that move. Rule 834 which Mr. Warren read into the record — 'Trains, or engines without trains, will be under direction of the yardmaster.'

Q — In this instance, the yardmaster and both dispatchers have denied jurisdiction over this train or engine, and you as train rule examiner, are you upholding that contention?

A — Rule 93 gives this engine permission to make that move.

Q — Even in the face of an oncoming passenger train?

A — If it is in yard limits, yes sir."

Again the Chief Rules Examiner testified as to Engine 206:

"Q — What is this engine from Oaklawn to Brewer, proceeding to Brewer, to get a train?

A — He is merely a yard move. He is just an engine and caboose moving under the yard limit rule.

Q — Is he a yard engine from Oaklawn to Brewer?

A — No, he isn't a yard engine as a yard engine is defined in the book of rules. He is merely an engine and a caboose moving as provided by rule 93."

He also testified:

"**Mr. Wyatt** — Everyone denies having jurisdiction over these engines going from Oaklawn to Brewer and moving under rule 93. I would like for you to answer who has jurisdiction over these engines from Oaklawn to Brewer and what protection do they get from Oaklawn to Brewer after their train?

Mr. Dowdy — Their protection enroute is provided for by rule 93.

Q — I asked who had jurisdiction over these engines and what protection they get from trains running against the current of traffic.

A — As for trains running against the current of traffic they have protection of rule 91(a) and rule 93. I should not have said rule 91(a). I should have said 93, and as to who has jurisdiction over them, I would have to read rule 834:

"R. E. Dowdy

'At stations where yard force is employed, train or engines without trains, will be under control of the yardmaster and all employes in train, yard and engine service will be subject to his direction. Road crews of trains entering such stations will be responsible for their respective trains and engines until same are taken charge of by the yardmaster or his representative.'

"Q — Then the yardmaster has jurisdiction over these engines?

A — According to rule 834.

Q — Now what protection do they have if they are not notified by the yardmaster that this train is running over the south-bound, running against the current of traffic?

A — Rule 93."

He testified further:

"**Mr. Wilson** — The rule states that the train dispatcher will not issue a form D-R until he knows the track is clear of opposing trains, is that right?

A — That's right.

Q — Then, is the train dispatcher also required to know that that track is clear of engines or yard movements in yard limits before issuing such an order?

A — No, as under our present book of rules we cannot give trains right over yard engines.

Q — Under the present circumstances at Oaklawn, in your opinion, wouldn't it be a physical impossibility for the train dispatcher to know that that track is clear of yard engines and road engines?

A — Well, as far as being impossible is concerned —

Q — Under the present set-up?

A — I can't say that it would be impossible, but I don't see how you could keep up with your duties as a train dispatcher and put in the time it would take to find that out."

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"Q — We have, further, the example of the engine 206 on night in question. You stated that they needed check on overdue southbound, first class southbound trains, to enter this territory we are discussing. Is that correct?

A — That's correct.

Q — The yardmaster has testified that he wouldn't necessarily notify yard crews that any passenger trains are to be running on opposing tracks. The dispatchers have testified that they don't feel the need to inform road engines in the movement from Oakland to Brewer, to tell them of the fact of passenger trains running on the opposing main. Is it your opinion, as Chief Train Rule Examiner, that this information is not needed in the class of engines concerned?

A — It is my opinion that if rule 93 is properly complied with, then this information is not needed."

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"Q — Then, by your own admission we have lap over rules and dual jurisdictions that create a safety hazard in train operations at that point, do we not?

A — I don't see that we do. The dispatcher has jurisdiction over No. 94 so far as train orders are concerned, and so far as rule 834 is concerned we have always interpreted that rule to mean trains arriving in the yard, however, if the yardmaster issued instructions to 94 within yard limits, 94 would be expected to obey them?

Q — What is your interpretation of rule 836? First paragraph?

A — I can't see where there could be any interpretation to that rule except the way it reads.

Q — I will refer you to that part reading, 'they will guard against dangerous conditions in train movements, and improper or unsafe combinations in train orders.'

A — Engine 206 was not a train movement.

Q — It was large enough to cause quite an accident, was it not?

A — The size had nothing to do with the definition of a train.

Q — I don't think you could strike the entire rule out because only one participant was actually a train, do you?

A — So far as the dispatcher providing for his train movements, I can see no dangerous conditions in the train order he issued, and rule 93 provides for the operation under this rule insofar as No. 94 was concerned."

The testimony of the Chief Rules Examiner is vital in this case. While an officer of the Carrier, he testified in a most impartial manner. The net effect of his testimony is that both the train and the engine and caboose were proceeding within yard limits under Rule 93. He further testified it was not necessary for the dispatchers to notify Engine 206 of the fact of passenger trains running in the opposing main. When asked whether under the present circumstances at Oaklawn wouldn't it be a physical impossibility for the train dispatcher to know that the track is clear of yard engines, he said he didn't see how you could keep up with your duties as train dispatcher and put in the time it would take to find out. When asked who had jurisdiction over these engines he pointed to Rule 834 which puts them under the control of the Yardmaster.

In view of this uncontradicted testimony, it is difficult to see on what basis Carrier disciplined Claimants keeping in mind that they were only charged with violating general rules of safety and Carrier pointed to no specific rule pertaining to their duties prior to the accident. Indeed, it seems from the testimony that all parties relied on Rule 93 to prevent accidents and that the dispatchers were justified in relying on that rule and did so even though the testimony shows that some railroads have abandoned the last paragraph of this rule as dangerous.

Since the dispatchers were not charged with the violation of other safety rules at the hearing it would be improper to consider them here. Nor does the fact that one dispatcher belatedly attempted to contact Engine 206 and the operator at Walz change the picture since it is not shown that he violated a rule of the Company in his prior actions. The fact that the I.C.C. report of the accident pins the blame exclusively on the engineer of Train No. 94 must also be considered. Thus, this Board believes the Carrier improperly disciplined the Claimants.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was violated.

AWARD

Claim sustained as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.