

Award No. 11968
Docket No. TE-10185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, that:

1. Carrier violated the rules of the Agreement when it unjustly disciplined L. Forbes for an incident during his tour of duty commencing May 9, 1957.

2. Carrier be required to remove the discipline and clear the record of L. Forbes, and pay him for all time lost attending the investigation and hearing as provided for in Article 32 (f) and (g) of the Agreement.

OPINION OF BOARD: The issue presented by this docket is whether there is sufficient evidence in the record to support Carrier's disciplinary action against the employe Leonard Forbes. We hold that there is.

On May 10, 1957, a cloudy hazy night, a east bound freight train derailed at Waterloo, Indiana with 35 cars of the 122 leaving the track. The physical cause of the wreck was a burned off journal on the south side leading wheel of the sixty ninth car from the head.

Leonard Forbes was the tower operator at Kendallville a point approximately thirteen miles west of Waterloo. The tower was on the north side of the west bound tracks. As the train approached he was standing on the steps of the tower. He already knew that the train had stopped for sticking brakes twenty-seven miles west of his station. As the train passed he stated that he saw nothing out of the ordinary but that he detected something smelling which he thought might be a hot box or brakes sticking. In any event he thought there was something unusual about it. The Toledo Dispatcher said that Mr.

Forbes reported to him that he observed something warm but that he wasn't sure what it was and that he detected an odor towards the rear of the train. The Waterloo tower operator said that Mr. Forbes reported to the dispatcher that he heard a squealing noise.

Mr. Forbes gave the train a high ball but as indicated communicated his doubts to the Dispatcher.

The Carrier following an investigation charged Mr. Forbes with violation of three rules:

Rule 101 which provides:

"Trains must be fully protected against any known condition which interferes with their safe passage at normal speed.

"When conditions are found which may interfere with the safe passage of trains at normal speed and no protection has been provided, such action must be taken as will insure safety."

Rule 108 provides:

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

Rule 701 (7th paragraph) states:

"If any indication of conditions endangering a train is observed, 'Stop' signal must be given. If there are no apparent defects, employes, except crossing watchmen, must give 'Proceed' signal."

The record is sufficient to support a finding of violation of the Rules and the Carrier's action of a 30 day suspended sentence is not arbitrary or capricious.

In view of Mr. Forbes long service and the high regard with which his abilities are held by his fellow employes and his obvious honesty in testifying during the course of the investigation and hearing had we been the trier of facts we might have reached a different conclusion from that reached by the Carrier. But as it has been said many times we do not weigh the evidence. If there is valid evidence brought out by the investigation to support the action taken we may not disturb it.

We have examined the record relative to the question of whether the hearing was fair and impartial and we are satisfied that it was. Mr. Forbes was of the same opinion both as to the investigation and the hearing and said so on the record.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.