

Award No. 13296
Docket No. TD-14710

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier") violated the existing Agreement between the parties, Regulation 6 thereof in particular, by its action in withholding Train Dispatcher H. H. Bauserman from service, effective December 16, 1962, and by imposing discipline to the extent of suspension of forty-one (41) days, and disqualifying him as Train Dispatcher.

(b) The Carrier shall now be required to compensate Train Dispatcher H. H. Bauserman for loss of compensation sustained because of Carrier's action from the date withheld from service until the date he was restored to the position of Train Dispatcher, and that the individual claimant's record be cleared of the said discipline.

OPINION OF BOARD: This is a disciplinary case involving a train dispatcher with approximately thirteen years of experience. The record in this case is quite voluminous and comprehensive. The facts concisely stated, are as follows: At 3:54 A.M. Sunday, December 16, 1962, Carriers' Train ME-3, went into emergency on Number 2 track in the vicinity of the Rockville Interlocking and Block Station, about six miles west of the Harrisburg Passenger Station. It was subsequently reported that the cause of the emergency was a broken coupler on the sixty second car of the train, thereby necessitating the removal of that particular car from the train before it could proceed. The Claimant Train Dispatcher, in a telephone conversation with the Conductor of Train ME-3, arranged for the switching movement required for the removal of the car from the train. ME-3 proceeded after this had been accomplished. However, after its departure, Train 13 at approximately 5:48 A.M. advised the operator at Rockville Tower that it had struck an object near that point resulting in damage to the fuel tank of the second diesel unit of that train. At approximately 11:06 A.M. on the same morning, the Claimant was notified by telephone that he was being held out of service pending investigation. An investigation was held the next morning beginning

at 10:00 A. M. A written notice advising Claimant formally that he was being held out of service pending investigation, trial and decision, was handed to him five minutes before the investigation began. A trial was subsequently held, a verbatim transcript of which is contained in the record.

A review of the evidence presented at the trial, reveals that the Conductor, the man on the scene of the emergency, failed to advise the Claimant, or the Block Operator, or for that matter any other employe that the broken coupler might in any way constitute a hazard to other moving trains. When the Claimant had originally been advised of the emergent situation, he immediately put a block on Number 1 track as protective action. The testimony indicates that the Claimant told the Block Operator to advise the Conductor to inspect the train. The Conductor apparently did so, but either failed to observe that the Coupler was off the train and in the gauge of the track, or did observe it but failed to report it. He testified that in the switching movements, twelve cars went over the exact spot where the Coupler had fallen, and all without incident. Once the damaged car had been removed and the twelve cars had been connected once again, the train proceeded without incident.

The principal question to be resolved is whether the Train Dispatcher, who admittedly is responsible for the safe movement of all trains within his jurisdiction, was negligent in the circumstances of this case. Was he acting as a reasonably prudent individual when, as he testified, he "assumed the Coupler was still on the car." This is the focal point of the entire case.

The Claimant Train Dispatcher was approximately one hundred miles from the scene of the mishap. It is obvious that he must depend on other employees for information upon which to base a decision. In the case of an emergency, such as the instant one, it is the composite responsibility of all employes to protect the train and the interests of the Carrier, employes, public, etc. It goes without saying that safety is the watchword and is always to be considered as the over-riding factor in cases such as this one. From the information given to the Claimant by the Conductor and the subsequent movement of the twelve cars over the spot where the broken Coupler was located, we think that the Claimant did in fact handle the situation as a reasonably prudent individual would. Hindsight of course, is always in cases like this better than foresight. After a careful review of all available evidence and a thorough evaluation and consideration of same, it is our judgement that the responsibility for this accident lies elsewhere and not with the Claimant. The evidence presented at the trial does not convince us to the point that we can properly characterize it as substantial, thus enabling us to deny the claim. This evidence is lacking in placing the responsibility with the Train Dispatcher, as a consequence of which we are constrained to say that the Carrier's action in this case, in the face of the evidence was arbitrary and capricious. We will sustain the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1965.