



Award No. 14535

Docket No. TE-14343

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway (T. C. Division-Chicago & North Western Railway), that:

1. Carrier acted unjustly when it dismissed Telegrapher C. L. Harlow from the service of the Company.

2. Carrier shall reinstate Telegrapher Harlow to the position from which he was improperly removed with seniority unimpaired and with pay for all wage loss sustained by him due to the unfair and improper action taken by the Carrier.

NOTE: Telegrapher C. L. Harlow was subsequently reinstated by the Carrier, but without pay for time lost.

OPINION OF BOARD: This is a discipline case.

Claimant, C. L. Harlow, was, on dates involved, regularly assigned to Relief Position No. 5, which included work on third shift position (12:00 Midnight to 8:00 A.M.) at Merriam, Minnesota, on December 7, 1962. On December 8, 1962, he was served notice of investigation to be held on December 12, 1962, concerning:

"Your responsibility in connection with Train No. 201, leaving Merriam, Minnesota, approximately 2:10 A.M. on December 7, 1962, without proper check of superior train."

The investigation was held as scheduled. Witnesses examined included train service employees on Train No. 201, the train dispatcher, and Claimant. The testimony adduced showed that Train No. 201 did, in fact, depart from Merriam, in violation of Operating Rule S-83. This rule reads as follows:

"A train must not leave its initial station or any subdivision, junction, or pass from double or three or more tracks to single track, or leave CTC territory until it has been ascertained whether all trains due, which are superior, have arrived or left."

Train No. 2, a scheduled train superior by time-table direction, was due Merriam at 2:54 P.M. Under Carrier's Operating Rules, a scheduled train retains its time-table schedule and rights for a period of 12 hours; thus, Train No. 2 retained time-table status at Merriam until 2:54 A.M. Under Rule S-83, Train No. 201 could not leave Merriam until 2:54 A.M., unless advised by proper method, that Train No. 2 had arrived at that point. Train No. 201 departed Merriam at 2:10 A.M. on date involved, and did not have proper advice that Train No. 2 had arrived.

Claimant had several train orders addressed to C&E Train No. 201. All of these orders were delivered by the Claimant to Train No. 201 as the train moved past the Interlocking Tower, without stopping. It was suggested in the investigation that Claimant had violated Operating Rule 712 in permitting the train to depart Merriam, without advice as to arrival of Train No. 2. This rule reads as follows:

"Employees must observe rules for other classes of employees that relate in any way to the proper discharge of their own duties or the safety of operation."

It is contended in argument that Claimant had the obligation to notify the Dispatcher of his omission, in the issuance of an appropriate order or to notify the train crew that the train could not depart, prior to 2:54 A.M., absent such order.

These contentions completely overlook the fact that Train No. 2 had actually arrived at Merriam, practically on schedule, on the date involved. When the Conductor of Train No. 201 called Train Dispatcher from Chaska, a few minutes after leaving Merriam, and inquired about Train No. 2, the Dispatcher testified:

"I informed Mr. Lamb that No. 2 had gone, and told him it was OK to go."

In letter of General Chairman to Carrier's highest officer designated to handle claim, dated January 30, 1963, it was pointed out: "The opposing train had arrived Merriam about on time 11 hours earlier." These statements of fact are undenied.

The record shows that reports of arrival and departure of all trains at Merriam over the entire 24-hour period are maintained. Each Operator has access to, and, indeed, the Carrier logically contends, is chargeable with knowledge of the contents of such records. Thus, since it is undisputed that Train No. 2 had arrived at Merriam, close to the scheduled time, on the day in question, there could be no question as to Train No. 201 proceeding safely, insofar as Train No. 2 was concerned. Furthermore, it is not shown that Claimant was obligated under Rule 712 or Rule S-83 to inquire of the Train Dispatcher as to whether Train No. 201 had been advised of the arrival of Train No. 2 at Merriam, or that he was obligated to inquire of the train crew as to whether they had been properly informed of such arrival. Carrier has failed to prove that Claimant violated any rules or regulations. Consequently, the discipline administered cannot stand.

Under date of December 14, 1962, Superintendent Hussey notified Claimant that he was dismissed from service, effective same date. Later, after

grievance was filed on December 20, 1962, Superintendent Hussey, on January 28, 1963, advised General Chairman Smith as follows:

"The discipline administered Mr. Harlow has been changed from dismissal to 40 days' suspension, and Mr. Harlow has been returned to service."

Consequently, the dispute is presently concerned with the loss incurred as a result of attending the investigation and due to the suspension. The record contains an itemized statement showing such loss to be in the total amount of \$786.36. Carrier does not dispute the correctness of the items or the total amount claimed. Claim will be sustained for the amount claimed and shown.

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 Carrier violated the Agreement in assessing discipline against Claimant, and Claimant is entitled to be compensated as claimed.

AWARD

Claimant was wrongfully disciplined, and shall be paid in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1966.