



Award No. 15727

Docket No. TD-16131

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, 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 currently effective schedule Agreement between the parties, Part II, Regulation 6 and Regulation 2-B-2 thereof in particular, by improperly withholding Assistant Movement Director R. E. Lawder from service September 9 to September 16, 1964, inclusive, and by assessing as discipline the aforementioned seven (7) days withheld from service and further improperly assessing disqualification as discipline.

(b) Carrier shall now be required to compensate Claimant Lawder for compensation lost for the period improperly withheld from service.

OPINION OF BOARD: This is a discipline case. The Organization contends that Claimant was improperly withheld from service September 9 to September 16, 1964; that Carrier deprived Claimant of his right to due process by its failure to comply with Rule 6 of the Agreement; that Carrier did not meet the burden of proof to sustain the disciplinary action taken against the Claimant; and, that Carrier's assessment of disqualification as a measure of discipline was in violation of provisions of both Regulation 6 — Discipline and Regulation 2-B-2 (Part II) — Removal from position or extra list.

Claimant allegedly violated two instructions, issued by Assistant Superintendent—Train Movement Weber, for power to be used on Train UP-9 on September 8, 1964. A derailment resulted from the use of too much power at the rear of the train resulting in damages to equipment and facilities. The Organization questions the procedure followed in Claimant's subsequent investigation and trial. (supra)

Upon careful examination and reading of the transcripts (Investigation Hearing, September 9, 1964 and Trial transcript, September 14, 1964) testimony taken in both instances clearly indicates that Claimant's procedural rights were protected as to advance notice as required by 6-A-2 and 6-A-3; as to the exact offenses for which he was to be tried — 6-A-3; and, he was

afforded a fair and impartial trial under 6-A-1. Carrier did sustain its burden of proving Claimant guilty as charged. As stated in Award 13179:

"We do not weigh the evidence de novo. If there is material and relevant evidence, which if believed by the trier of the facts, supports the finding of guilt, we must affirm the finding."

The Organization cites Docket No. TD-15683, resulting in a sustaining Award 14477, between these same parties, wherein Carrier did violate Regulation 6-A-1, (b) when it held out of service, the employe prior to the investigation without him being specifically charged with a "major offense." This award differs from the instant dispute in that here the Carrier conducted the investigation prior to the suspension of Claimant from service and subsequently charged him with a "major offense." Such condition of Regulation 6-A-1, (b) was satisfied in the instant case.

As to the alleged violation of Regulation 2-B-2 by disqualifying Claimant from his position of Assistant Movement Director, this disqualification was removed upon appeal on the property, therefore the situation complained of no longer subsists, and the issue is moot.

There being no showing that Carrier acted in an arbitrary or unjust manner, the claim will be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July 1967.