

Award No. 16120  
Docket No. TD-16945

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John J. McGovern, Referee

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

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

(a) The action of the Denver and Rio Grande Western Railroad Company (hereinafter referred to as "the Carrier") in dismissing Train Dispatcher L. I. Garton, following hearing held at Salt Lake City on December 14, 1965, was unduly harsh and an abuse of managerial discretion and therefore in violation of the existing agreement between the parties, Rule 19 thereof in particular.

(b) The Carrier be required to reinstate Claimant Garton as train dispatcher with all rights unimpaired.

**OPINION OF BOARD:** This is a discipline case. Claimant was dismissed from the service, following a formal investigation, during which it was determined that he was responsible for heading a train into a siding, while the siding was occupied by another train, without first providing protection per operating rule 565. After his dismissal, he was reinstated by the Carrier as a telegraph operator. The claim as presented to the Board alleges that the dismissal was harsh and an abuse of managerial discretion, and as such was in violation of the existing Agreement. Petitioner merely requests that the Claimant be reinstated as a Train Dispatcher. There is no demand for pay for time lost.

We have carefully reviewed the record before us, and, in order for us to sustain Petitioner's position, we would be required to state categorically that Carrier's action in this matter was unreasonable and arbitrary. The evidence before us indicates otherwise. Carrier's action in this matter was exemplary in every way. We cannot find where Carrier has even been remotely arbitrary in its handling of this case. The investigation was fair, impartial and equitable. The seriousness of the Claimant's misdirection of a train without compliance with the Carrier rules cannot be overemphasized.

As we examine this record, we agree with the contentions of the Carrier to the effect that this case has been progressed to this Board on a leniency basis. The principle has been well established by many awards to the effect

that the Board has no authority to reinstate an employe on a leniency basis, since this is the sole prerogative of management. Further, we conclude from the record that Carrier's action was sound, and did not constitute an abuse of managerial discretion. We will deny 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 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 1st day of March 1968.