Award No. 16239
Docket No. TE-14957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when on the date of December 10, 1962, and as a result of investigation held in the Superintendent's Office on the date of December 4, 1962, in Greensboro, North Carolina, and further without proper cause, it dismissed from service of Southern Railway, Operator L. E. Whitley.

2. Carrier shall restore Claimant L. E. Whitley to service of the Company and shall reimburse said Claimant for all wages lost while held out of service of the Company, resulting from action of the Carrier referred to above.

OPINION OF BOARD: Claimant is a telegrapher-leverman employed at Carrier's Pomona Yard, where on December 1, 1962 a car on Train No. 83 was derailed within the limits of the interlocking plant. He was working third trick as relief telegrapher-leverman at the interlocking tower, which controls all the switches within the interlocking plant.

On the date in question, Train No. 83 pulled through the interlocking plant and stopped when all cars were cleared of the crossover switch. Train No. 83 remained at that location waiting for Train 37 to pass and for a yard engine to complete a switching move. From the evidence evinced at the investigation, the Yardmaster after being told by the Claimant that the switches were properly lined, instructed the Engineer of Train 83 to back into the yard. The Brakeman Crew Member of No. 83 told the engineer by portable radio that the switches were not properly lined; further, he observed the crossover switch change position as the leading car was moving over it, and told the engineer to stop, which he immediately did. The leading car's north truck had gone into the passing track, while the rear truck was headed through the crossover, thus causing the derailment. Claimant was thereupon removed from service at the conclusion of his tour of duty.

On December 3, 1962, the Claimant, the Conductor, the Brakeman and the Yardmaster were changed with responsibility for the derailment. The

investigation was held on December 4, 1962, and Claimant was notified on December 10, 1962 that he was dismissed from service. On January 8, 1963, he was reinstated to the service, with seniority rights unimpaired, and without compensation for time lost while out of service. The instant claim is that he be paid for the time out of service.

From the foregoing recitation of the evidence compiled from the investigation, it is abundantly clear that the Claimant was guilty as charged. It appears that the Carrier, in consideration of the Claimant's relative inexperience, reduced the discipline imposed from dismissal to time lost as indicated by the claim itself. We cannot find that Carrier's imposition of such discipline was arbitrary or capricious and, accordingly, will deny the claim.

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 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 18th day of April 1968.

DISSENT TO AWARD 16239, DOCKET TE-14957

Under ordinary circumstances there would be little ground for disagreeing with the decision of the majority in this case. The claimant certainly did not properly observe Rule 616, and the loss of some fifteen or twenty days of work cannot be considered excessive discipline unless there were some extenuating circumstances.

And there certainly were such circumstances in this case. The claimant was an extra man with limited experience in the operation of interlocking plants. But, more important is the fact, clearly revealed by the record, that the Carrier customarily permitted what I consider to be intolerable laxity on the part of all employes involved and their supervisors. No one properly observed any of the rules pertaining to the movement which was involved.

If the brakeman had been where the rules required him to be; if the engineer had accepted authority to move only from the employe authorized by the rules to give it; if the yardmaster had attended to his own work instead of trying to act as a towerman contrary to Rule 629; if the claimant himself had insisted on operating the interlocking in accordance with all the applicable rules; and, finally, if the Carrier officials, who certainly knew of the sloppy operation, had been more diligent in enforcing the rules, there would have been no accident.

These circumstances were pointed out to the Referee and the Carrier Members, with a request that they be at least mentioned in th award, in which case I would offer no objection to a decision allowing the discipline to stand.

Not only was my request ignored, but the decision contains a statement indicating that the yard master acted only after being told by the claimant that the switches were properly lined. The record clearly shows that the yard master never testified that the claimant told him the switches were properly lined. At best the evidence on this point was conflicting. The majority seriously erred in this respect.

For the reasons indicated I dissent.

J. W. Whitehouse
Labor Member

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