



Award No. 16312
Docket No. TD-16965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE LACKAWANNA RAILROAD COMPANY

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

(a) The Erie-Lackawanna Railroad Company (hereinafter referred to as "the Carrier"), violated the effective agreement between the parties, Articles 2(a), 7(a), 7(f) and 7(h) in particular, by its action in failing and declining to compensate Train Dispatcher C. W. Arnold for attending hearing on May 24, 1966, and in imposing five days' deferred suspension against the individual claimant as a result of said hearing.

(b) The Carrier be required to compensate Train Dispatcher C. W. Arnold four hours at time and one-half rate of trick train dispatcher for attending the said hearing and to clear his record of the charge upon which Carrier relies as the basis for imposing discipline.

OPINION OF BOARD: This claim grew out of an incident on May 24, 1966, after which Train Dispatcher C. W. Arnold was notified to attend an investigation "to develop circumstances in connection with delay to Train No. 2 account Ore Extra 1856 East ahead at Avon A.M. Tuesday, May 24, 1966." On that day, Mr. Arnold issued instructions to the conductor and engineer of Extra 1856 to leave fifty-seven cars of ore on Track No. 7 in Mosier Yard at Avon, Ohio. Learning that Train No. 2, an eastern first class passenger train, was running late, he arranged for an indication signal at Avon to inform Extra 1856 East to pull in and clear the main track. The train crew of Extra 1856 East made its cut-off before pulling in with the result that Train No. 2 was delayed one hour and seven minutes at Avon.

Mr. Arnold contends that the summons he received to appear at an investigation on May 31, 1966, did not include the specific charges of which he was accused. He also states that the investigation did not develop proof of violation of any rule of the Agreement or proof of his responsibility in connection with the delay of Train No. 2. For these reasons he argues there was no basis for imposing a penalty and claims that he is entitled to compensation at time and one-half rate for attending the hearing.

In its denial, Carrier submits that the investigation determined that Claimant had failed to supervise the movement of trains properly or to issue instructions that would have prevented the delay of Train No. 2. It asserts that the notice to appear at the investigation had sufficient information to comply with Article 7(a) of the Agreement, for Claimant was apparently aware of the charge, had ample opportunity to prepare a defense, and did appear with representation at the hearing.

With reference to the contention that the notice was defective, we find that Mr. Arnold was not misled or taken by surprise at the investigation. The subject of the inquiry in the notice which was sufficiently clear and the advice in this notice that he could have representation at the hearing if he desired apprised him that the purpose of the investigation was to determine his responsibility in connection with the delay of the train. Since there is no showing that Claimant's rights were impaired as a result of this notice, and since there was substantial compliance with Rule 7(a), we hold that he was presented with a proper notice.

We next consider whether the record supports the decision of the investigation that Mr. Arnold was responsible for the delay of the first class passenger train. The record shows that when Mr. Arnold learned that Train No. 2 was running late, he arranged for a signal indication at Avon requiring the crew of Extra 1856 East to clear the main track. Carrier acknowledges that he performed this responsibility in accordance with the rules, but it states he was derelict in his duties because he did not inform the crew of the freight train of the running time and position of the passenger train pursuant to a practice requiring his transmitting such a message. The record does not give clear and convincing proof of a practice which requires that a train dispatcher send such information. The "clear order" that he set in motion was ignored by the crew, who proceeded to set off the cars of ore before clearing the main track. The failure of the crew to respond to their instructions delayed the passenger train, rather than the failure of Mr. Arnold to supervise the movement of the trains properly.

Under these circumstances, we hold that Claimant was not derelict in his duty and responsibility and, therefore, sustain the claim.

However, based upon Article 7 (f) of the controlling Agreement, compensation is not allowed as requested because Claimant sustained no wage loss.

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 Agreement was violated by the Carrier.

AWARD

Claim sustained 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 May 1968.