



Award No. 16348
Docket No. TE-15367

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Agent-Operator, Mr. Ray Cloe, Greenwood, Indiana, be compensated for all monetary loss which he may suffer between January 2, 1963, through January 30, 1963, account improper discipline imposed for violation of Rule 317 as indicated by Form G-32.

OPINION OF BOARD: Claimant was the regularly assigned Agent-Operator at Greenwood, Indiana during September, 1962. On September 10th, 1962, he was charged with a violation of Rule 317, Book of Rules for conducting transportation. The specific charge read as follows:

"Permitted extra 5924 North to enter block at Franklin, Indiana at 10:43 A.M., September 6, 1962, occupied by an opposing train, violation Rule 317, Book of Rules for Conducting Transportation."

The trial was held on September 17th, 1962, and based on that record, the Claimant was suspended for thirty days. He now asks the Board to compensate him for money lost on the grounds that the discipline imposed by the Carrier was improper.

Rule 317, the rule Claimant was charged with violating, is quoted below:

"317 (For absolute block for opposing movements and permissive block for following movements on the same track.)

Before admitting a train or engine to a block under Clear-block signal, the operator in charge of the block station or block limit station at the entrance of the block must know that the block is clear and that no other train or engine has been given permission or a signal to enter the block. Signals governing opposing movements, where provided, must display Stop-signal. The operator will then display a clear block signal for a train or engine to be admitted to the block. The operator in charge of a block-limit station may give a train or engine at that block-limit station verbal

permission to enter one block. The operator, when authorized by the Superintendent Transportation, will issue Clearance Card (Form K) to a train to pass one or more block-limit stations as though Clear block signal were displayed.

Before admitting a train other than a passenger train to a block, the operator in charge of the block station or block-limit station at the entrance of the block must know that the block is clear of opposing trains and of passenger trains, and that no opposing train or no passenger train has been given permission or a signal to enter the block. Signals governing opposing movements, where provided, must display Stop-Signal and Stop-Signals to passenger trains must be displayed. If the block is clear of opposing trains and of passenger trains, the operator in charge of the block station may permit a train other than a passenger train to follow a train other than a passenger train into the block by displaying a Permissive-block signal for the train to be admitted to the block. The operator in charge of a block limit-station may give a train or engine at that block-limit station verbal permission to enter one block. The operator, when authorized by the Superintendent Transportation will issue Clearance Card (Form K) to a train not governed by clear-block signal to pass one or more block-limit stations as though Permissive-block signal were displayed.

Except as provided in Rules S-318, 327, 333 or by train order, a train must not be admitted to a block which is occupied by an opposing train or by a passenger train, and a passenger train must not be admitted to a block which is occupied by any train."

The Claimant was the only witness at the trial, and was accompanied by a representative of his own choosing. He was given an opportunity to present evidence or witnesses on his own behalf, but apparently chose not to do so. At the conclusion of the trial, he was asked by the hearing officer if he had any comments or criticisms of the way the trial had been conducted, and he replied that he had none.

The Organization raises several issues for our consideration, one being that since the officer who conducted the trial did not report his findings or assess the discipline imposed, Claimant's rights were thereby prejudiced. Without going into the substantive merits of this issue, we must dismiss it because it was not raised on the property.

The Organization also contends that Claimant's rights were prejudiced by the Carrier refusing to turn over certain documents, such as "Station record of Train Movements", train orders, etc. The former was made a part of the trial record but was not a part of the trial record furnished to the employees. Nor, indeed, was it a part of the record before this Board. However that may be, the Organization has not shown precisely how the Claimant was injured by these documents not having been furnished. The evidence contained in the trial record is clear, convincing and conclusive, since we have, by the Claimant's own testimony, an admission of guilt. The Organization, subsequent to the trial, raises many questions, many of which, in our judgment should have been raised at the trial. They aver that other witnesses should have been called to testify, such as the Train Dispatcher, Conductor, Engineman, etc. These are matters that Claimant and the Organiza-

tion should have considered preparatory to the trial, and cannot now be considered by this Board.

In this case, as stated before, we have an admission of guilt by the Claimant. At page 3 of that record, the following testimony was elicited from the Claimant.

"Q. Then, in effect, Mr. Cloe, it was opposite moves within the block, Greenwood to Franklin, with the 8902 south and 5924 North at the same time?

A. That's correct.

Q. This, then, is a violation of Rule 317 of the Book of Rules for Conducting Transportation, is that correct?

A. Seems like it is."

Hence from the record, it is clear that Claimant is guilty as charged. We cannot find anything in the record of trial which would enable us to sustain the Claimant's position as to his guilt or as to the discipline imposed. We conclude that such discipline was commensurate with the offense and 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 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.