



Award No. 16575

Docket No. TE-15457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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:

J. A. Lieb was unjustly disciplined 15 days' suspension for "Operating Train No. 839 MU Engine 247 through No. 23 and No. 25 crossover at North Philadelphia Block and Interlocking Station in violation of Plate Order No. 101 on August 20, 1963 and failure to comply with Supervising Operator's Notice of March 15, 1963." The discipline imposed on J. A. Lieb was arbitrary, capricious and excessive and should be substantially reduced.

OPINION OF BOARD: In this discipline dispute the parties have presented a joint statement of agreed upon facts. Mr. J. A. Lieb, a Leverman, was charged with violation of Plate Order No. 101 on August 20, 1963, and failure to comply with Supervising Operator's Notice of March 15, 1961. As a result of a trial he was notified that a discipline of 30 days' suspension would be imposed. On October 17, 1963, he made an appeal to the Superintendent of Personnel. The appeal was not sustained; however, on the basis of leniency the penalty was reduced to 15 days' suspension.

Petitioner claims that the discipline imposed was arbitrary, capricious, and excessive. It points out that the excessive discipline was imposed because Mr. Lieb was the District Chairman and did not get along with the Supervising Operator. The haste with which Carrier carried out the penalty is evidence of this vindictive attitude. Furthermore, in comparison with other cases on the Philadelphia Region, other employees under similar, if not identical circumstances, received less severe penalties of reprimand or suspension of a maximum of three days. Petitioner also emphasizes that Mr. Lieb's past service record was free of disciplinary action. The mistake Mr. Lieb made was a human error and he did require such severe discipline to make him aware of his responsibilities. As far back as March, 1960 he had recommended to the Supervising Operator that a different colored blocking device be used to indicate that power had been removed from a section of the railroad, but his suggestions were ignored. Petitioner requests that for these reasons the punishment be substantially reduced.

Carrier asks that the claim be denied because the penalty was assessed after a fair and impartial trial in which Mr. Lieb was found guilty as charged. It submits that the transcript of the record of the trial shows that Mr. Lieb admitted that he improperly routed Train No. 839 through No. 23 and No. 25 crossover switches which were de-energized in accordance with Plate Order No. 101, and that he failed to comply with the Supervising Operator's Notice of March 15, 1961. It asserts that the measure of discipline assessed was commensurate with the seriousness of the offense committed.

The transcript of the record which includes Mr. Lieb's admission of guilt gives ample evidence to support the violation as charged. In addition, the trial record reveals that Claimant's procedural or substantive rights were not abrogated. The conduct of the trial was not vindictive or prejudicial.

In view of the fact that the action of Carrier in the determination of guilt and of the degree of discipline imposed was not arbitrary, we find no valid basis for substituting our judgment for the disciplinary action taken. Accordingly, the claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 13th day of September 1968.