

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

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

(a) The New York Central, (hereinafter referred to as "the Carrier"), violated the Agreement between the parties, Article 9 thereof in particular, by its failure to accord Train Dispatcher W. J. Nicholson a fair and impartial hearing and its further failure to prove the charge involved and for which Claimant Nicholson was suspended for thirty (30) days.

(b) Because of said violation the Carrier be required to compensate Claimant Nicholson and correct his record in accordance with the provisions of Article 9 (d) of the Agreement.

OPINION OF BOARD: This dispute arose from the assessment of a disciplinary penalty of suspension from service for thirty days. At a formal hearing Train Dispatcher W. J. Nicholson was found guilty of failing to realign the switch at the east end of North Control Siding, Control Point 113, after authorizing a motor car to enter and use that track and before displaying a proceed signal indication for Train LS-5, resulting in a collision.

Mr. Nicholson contends Carrier violated the Agreement particularly Article 9 because it failed to accord him a fair and impartial trial and failed to prove the charges involved. He submits that the findings of Carrier were not supported by evidence of record but were based upon a personal investigation of Carrier's Superintendent Brinkworth, who did not participate in the hearing, thus there was a flagrant disregard of his rights. Mr. Nicholson attributes the accident to malfunctioning of the signal facilities rather than to his negligence or failure to perform his duties in the required manner.

Carrier takes the position that Mr. Nicholson received a fair and impartial trial and states he indicated that he did so prior to the conclusion of the hearing. It denies an independent investigation carried on by the Superintendent and asserts that the evidence adduced at the hearing showed that he failed to realign the switch.

The transcript of the investigation discloses that Mr. Nicholson testified that he turned the knob to realign the switch and that the panel indicated proper alignment. No witnesses were present to observe his actions at the time he purported to have turned the knob. Mr. Nicholson and other witnesses also testified that in the past failures in realignment occurred due to malfunction of the equipment without indication on the panel. However, the record shows that approximately twenty minutes after the collision of the motor car and train, a Signal Department Officer conducted tests in the Dispatcher's Office in which the Dispatcher's Officer handled the controls as Mr. Nicholson stated he had done before the collision, and at the same time another Officer in the field observed the results. The tests showed that the equipment functioned properly. About three hours later additional tests were made by the Chief Signal Inspector, the Electric Foreman and the Assistant Signal Supervisor who checked relays, battery grounds, and the service code line, and found them in proper condition. While it is recognized that signal devices are not infallible in their functioning, the record is convincing despite some conflict in testimony that the accident did not result from malfunction or failure of the equipment. The evidence developed in the hearing supports the decision that Mr. Nicholson was responsible as charged.

With reference to the contention that the decision of guilty was rendered on the basis of a separate investigation, not part of the formal hearing, we are satisfied that Superintendent Brinkworth reviewed and considered the evidence adduced at the hearing before arriving at his decision and that this substantial evidence constituted a sound basis for his decision.

Since Claimant was accorded a fair and impartial trial and his procedural or substantive rights were not abrogated we find no valid basis for substituting our judgment for that of Carrier's. Therefore, the claim is denied.

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 13th day of September 1968.

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