

Award No. 16736
Docket No. TE-15675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

1. Improper appeal hearing was held on November 26, 1962, relative to discipline of thirty (30) days' suspension as indicated by Form G-32, dated October 12, 1962, in connection with violation of Rule 317, September 6, 1962. P. O. Tucker, Franklin, Indiana.

2. Claimant did not violate Rule 317.

3. Claimant was charged with improper rule.

4. Appeal hearing was postponed November 24, 1962 (Saturday) but for some unknown reason it was rescheduled the morning of November 26, 1962 after 8:30 A. M.

5. Because of this unreasonable action by the Carrier, it is requested that Mr. P. O. Tucker, Agent-Operator, Franklin, Indiana, shall be compensated for any and all monetary losses sustained as a result of the improper discipline of thirty (30) days suspension and his service record be cleared.

OPINION OF BOARD: Claimant Tucker, an Agent-Operator assigned at Franklin, Indiana, was, on September 17, 1962, tried by Carrier on the charge that he:

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

After he was notified that he had been found guilty and would be suspended for 30 days, he appealed as follows:

"I wish to appeal decision rendered by PTM DO Mr. L. W. Huey, Form G-32, Case No. F-131, held September 6 [sic], 1962.

I did not violate Rule 317, Book of Rules for Conducting Transportation as charged; therefore, I ask for hearing with Superintendent-Personnel."

The appeal hearing was held on November 26, 1962. The Superintendent denied the appeal in a letter dated November 28, 1962:

"The trial record shows that you failed to comply with the clear and definite requirements of Rule 317 of the Book of Rules for Conducting Transportation on the date in question, and in view of the serious nature of your dereliction in this respect your request for leniency cannot be given favorable consideration. . . ."

In spite of Carrier's contention that we are limited to the issue of leniency, we are convinced by Claimant's letter requesting hearing of his appeal, and by the lack of any clear showing that he withdrew that request as it reads, that we must decide among other issues whether the original hearing proved that Claimant had violated Rule 317.

We find no proof of any impropriety prejudicial to Claimant in the appeal hearing; we find no proof that the scheduling of that hearing was prejudicially improper, since Claimant was given an opportunity, which he declined to avail himself of, to refuse to proceed without representation; and we find no evidence which proves that Claimant was charged with an improper rule. Thus, the Claim must stand or fall on whether it was proved at the original hearing that Claimant had violated Rule 317.

Rule 317 includes the following:

"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 . . ." (Emphasis ours.)

From the record of the September 17th hearing we find that Claimant was aware that at 8:13 A. M. work train 8902 had entered the block between Greenwood and Franklin and was permitted to operate in either direction between Greenwood and Mile Post 12; that he knew that 8902 was operating within the block until about 2:57 P. M.; that at 10:34 A. M. he permitted extra train 5924 to enter the block at Franklin, headed towards Greenwood, and that at that time he could not know whether 8902 was moving in opposition to 5924.

Claimant's defense at the hearing was that since 8902 had no assigned direction it could not be considered to be in opposition to any other train in either direction. This is not a sound defense; a train moving in a direction opposite to another train is an opposing train to that other train. The Rule requires that the operator "must know" that the block is clear of opposing trains; Claimant only knew that it was possible that 8902 was not

operating in a direction opposite to 5924, not that it was a fact. Thus it is clear that Claimant was not complying with the requirement of the Rule that he know that there was no opposing train in the block.

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 1st day of November 1968.