



Award Number 17338

Docket Number TD-17521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

- (a) The Baltimore and Ohio Railroad Company (hereinafter referred to as "the Carrier") violated the existing Agreement between the parties, Article 7 thereof in particular, by its action in suspending Train Dispatcher S. E. Butts from service for fifteen (15) days (November 16-December 1, 1966), for alleged violation of Carrier's Operating Rule 803.
- (b) The Carrier be required to compensate Claimant Butts for time lost because of the disciplinary action referred to in paragraph (a) and his record be cleared of the charge therein involved.

OPINION OF BOARD: Claimant S. E. Butts was suspended for 15 days after an investigation preceded by the following notice:

"You are hereby notified in accordance with the rules of your agreement under which you are working to report at Trainmaster's Office, Cumberland, Md. at 10 A.M., Nov. 1, 1966 for hearing on the following matter: 'Your responsibility in connection with accident to train 88 at East End of 83 Fill at 4:50 A.M., Oct. 30, 1966 and failure to hold train 88 until head end had been advised that they had Pullman Standard car in their consist.'"

After the hearing Mr. Butts received the following advice:

"This refers to investigation held at Cumberland, Md. at 10:00 A.M., Thursday, November 10, 1966.

'It has been developed that you were at fault for permitting Train 88, Engine 6430, to proceed eastward from Hardman, W. Va. on October 30, 1966, when restricted Pullman Standard car, B&O 831015, was in the consist of such train, subsequently resulting in derailment of two cars near West End, W. Va.

Your failure was in violation of Rule 803 contained in the Rules and Regulations of the Operating Department. The discipline administered is fifteen (15) days actual suspension. Actual suspension starts as of 8:01 A.M., November 16, 1966, and expires at 8:01 A.M., December

1, 1966. You may mark up for duty at 8:01 A.M., December 1, 1966.
"Please acknowledge receipt of this letter."

Rule 803 reads as follows:

"They must keep fully informed of wheather and all other conditions affecting the movement of trains, keeping Chief Train Dispatcher informed. They will also take such action as is necessary to insure safety of trains." (Emphasis supplied.)

Employees complain of the discipline assessed for the following reasons:

- (1) Notice to Claimant under Rule 7 (b) was insufficiently precise, and
- (2) the evidence adduced at the investigation was insufficient "to sustain any charge against the individual claimant . . ."

On the occasion in question, the 30th of October of 1966, Carrier's Train No. 88 was literally pulled apart while travelling east out of Hardman, West Virginia. The resultant damage amounted to \$3,500.00. The two engine train was pulled apart because the rear engine, having received precautionary instructions from Dispatcher Butts, was trying to maintain a speed of less than 10 miles an hour while the head engine crew was plowing ahead, unaware of the existence of a Pullman Standard car in the train consist. Special handling of such cars was required.

On the first point—the sufficiency of the notice—we hold that the record reflects that Mr. Butts was fully aware of the dereliction with which he was charged. While the notice did not mention a specific rule, we have frequently held that such is not essential to fair treatment of the accused. Award 11443 (Dolnick).

The second point is deserving of more elaboration; we will discuss Claimant's defense on the merits.

1. Petitioners contend that Mr. Butts was not derelict in failing to notify the head engine crew since he did not have time to do so prior to the accident. This is not so. The train was at Hardman 8 minutes. He notified the rear engine crew and relied on them to tell the head engine crew; however, since the head engine had no radio, the rear engine crew could not contact them. Dispatcher Butts should have made certain that the front crew had the word; otherwise, he should have (and he could have) held the train.

2. Petitioners' main argument is found in their contention that General Order 10, being an order superseding General Order No. 9, relieved Train Dispatchers of responsibility relative to the movement of Pullman Standard cars.

Assuming that General Order No. 9 did detail instructions for the handling of such cars, it unquestionably fixed specific responsibility on Train Dispatchers for "issuing train orders, instructing train and engine crews that such equipment is being handled in their train." Such specific fixing of primary responsibility was omitted from the superseding General Order—No. 10. The position of Mr. Butts necessarily implies that he was thereby relieved of responsibility for taking "such action as is necessary to insure safety of trains"—his general instruction under Rule 803.

We believe it fundamental that prime responsibility devolves on a Train Dispatcher to insure the safe movement of trains operating within

his jurisdiction. Butts acknowledged such responsibility when he notified the rear crew. His reliance on that crew to pass the word to the front was not in keeping with sound operating procedures. We do not believe the 15 day suspension was unreasonable.

Petitioners complain that the issue of Rule 803 was not developed on the property. Aside from our position that the responsibility levied under such rule is a fundamental one, inherent to the position of train dispatcher, we observe that the notice did in fact specify that he was being suspended because of a violation of such rule.

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.

A W A R D

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 July 1969.