

Award Number 17475

Docket Number TD-17897

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

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

- (a) The Seaboard Coast Line Railroad Company (hereinafter "the Carrier"), violated the then effective and applicable schedule agreement, Article 8 thereof in particular, by its action, effective June 24, 1966, following hearing held on June 10, 1966, in disqualifying Claimant W. T. Connatser from service as Assistant Chief Dispatcher.
- (b) Carrier shall now be required to rescind the action referred to in paragraph (a), clear Claimant Connatser's record with respect thereto, compensate him for time lost attending hearing, and to further compensate him in amount representing the difference between rate of compensation applicable to Assistant Chief Dispatcher and that applicable to trick train dispatcher from June 24, 1966, until the date the Carrier's action is rescinded and Claimant Connatser's record cleared.

OPINION OF BOARD: Claimant, W. T. Connatser, had been in Carrier's employ for twenty-one (21) years—during the last sixteen (16) of which he had occupied the position of "train dispatcher," the job he held until the present controversy arose. The record is silent as to any previous discipline against Claimant.

On May 31, 1966, Chief Dispatcher Herring notified Claimant that an investigation would be held on the charges that he, Claimant, had violated, among others, Rule 752, which reads:

Train dispatchers "must act promptly to protect trains in the event of hazardous weather conditions, obstructions or accidents and extend necessary information to all concerned."

After the investigation, Claimant was notified by Superintendent Vaughan that "For your failure to notify proper authorities promptly of reported track conditions in the vicinity of Mile Post VC 906 3/4, May 22, 1966, you are, effective June 24, 1966, restricted to working only trick train dispatchers' positions at Tampa and Mulberry."

Claimant advances his claim before this Board on the basis that: 1). The Agreement was violated as to that provision assuring him of a fair and impartial hearing, with "reasonable opportunity to secure the presence of

necessary witnesses;" 2). The carrier had failed to prove a dereliction of duty, i.e., specifically that he had not notified the proper authorities.

The uncontroverted facts appear to be these: Train Engineer Young telephoned Claimant-Train Dispatcher that he had just passed over what appeared to be a rough joint, and although Engineer Young did not think the joint was too bad, he thought a caution order should go out. Claimant issued a memorandum to all Branch Line dispatchers, with copies to Superintendent Vaughan and other Carrier officials, on the property, placing these copies in the mail baskets in Chief Dispatcher Herring's office. The memorandum described the location of the bad joint, asked that it be protected with train orders, that section forces be notified to make repairs, and that he, Claimant, was to be advised when repairs were made.

Prior to the investigation, as was his right under the Agreement, Claimant had asked the presence of Messrs. Herring, Vaughan and Young as witnesses. Superintendent Vaughan never appeared in any capacity at the investigation, but instead rendered the discipline decision against Claimant after the investigation. Chief Dispatcher Herring could not be a witness because he was appointed and did act as Carrier's investigating examiner. Only after a postponement was Engineer Young produced as a witness. Timely exception to the unavailability of these desired witnesses was taken by Employees in behalf of Claimant.

This Board finds that Claimant could not have been afforded a fair investigation as called for by the Agreement when one of his desired witnesses conducts the investigation against him and the other, failing to respond to being called as a witness, becomes the judge who metes out the discipline.

Carrier has a duty to bend over backwards to protect the Claimant's rights to a fair and impartial investigation. Here, witnesses valuable to Claimant's side of the case not only do not testify, but they cannot because they became his accuser and his judge.

We will not speculate as to the outcome of the investigation had Claimant had his witnesses and an impartial hearing examiner who was not involved in the alleged incident, as well as having a decision made by one who heard the evidence and saw the witnesses. However, one of Claimant's main contentions was that he had observed normal railroad practice to assure train safety, and that Rule 752, which he was accused of violating, was not specific enough to prove otherwise. It is interesting to note that several days after the alleged incident and the same day that Claimant received notice of the investigation from Chief Dispatcher Herring, that same Chief Dispatcher issued the following instructions:

"When a track condition is reported by anyone that would require a slow order, regardless of the hour of the day, MofW forces should be notified and if during assigned hours of Section Foremen and one is available close by, he should be notified along with the Roadmaster on whose territory such condition exists. If report is received outside of assigned hours of MofW forces, the Road master should be called."

We think the discipline here is harsh and excessive on the present Claimant, a twenty-one year employee of Carrier's, whose actions cannot be considered unreasonable under existing rules.

For the above reasons, this Board finds that this claim should be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.