



Award No. 17713

Docket No. TD-17902

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Robert C. McCandless, Referee**

**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION  
THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

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

(a) The New York, New Haven and Hartford Railroad Company (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between the parties, Article 6 thereof in particular, by imposing its arbitrary, unwarranted and harsh disciplinary action of disqualification against Train Dispatcher D. L. Rezendes as a result of hearing held on December 14, 1967.

(b) The Carrier be required to clear the record of Train Dispatcher D. L. Rezendes of the disqualification imposed and to restore him to position of Train Dispatcher with all rights unimpaired.

(c) The Carrier shall further be required to compensate Claimant Rezendes for his net wage loss on a continuing basis since disqualification because of Carrier's harsh, arbitrary, capricious action and abuse of managerial discretion in violation of the said schedule agreement.

**OPINION OF BOARD:** Claimant, Train Dispatcher Rezendes, was notified to and did attend an investigation to determine the cause and his responsibility, if any, "in connection with the delay to Train No. 48 at Cranston on Sunday, December 3, 1967, "while he was the train dispatcher on duty.

Such investigation was held, and Carrier found said Claimant guilty of violating the General Notice and Rule 762 of the Operating Book of Rules. Claimant was disciplined by being disqualified from working as a Train Dispatcher, by being withheld from service the day of the investigation, but was allowed to requalify for the position of S. S. Operator.

Employees contend that the charges were imprecise as to the ultimate findings against the Claimant; that indeed another, the Operator at Cranston, was to blame, or at least, should have been charged along with Claimant for part of the blame; and that the Claimant was not afforded a fair hearing — with his past discipline record being used against him.

Upon a complete review of the record this Board fails to find sufficient substance to the contentions of Employees to disturb Carrier's findings.

Claimant knew what had occurred on December 3, 1967. The notice was sufficient to allow Claimant time to prepare a defense certain, call witnesses and to be adequately represented. Claimant, himself, under questioning, admitted that were these circumstances to reoccur — he would handle the situation differently.

As stated in Award 16354, summing up a long line of decisions by this Board, we do not weigh the evidence. We do, however, review the record to ensure its impartiality and fairness. We have found here that the evidence is sufficiently substantial to support the charges. The Claimant here was not dismissed from service. He was disciplined in a manner which cannot give rise to the claim that Carrier was capricious, arbitrary or lacking in good faith. His past record of discipline could justifiably be used in determining the degree of this present discipline. Consequently, for the above reasons we will deny this claim.

**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 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.

#### 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 13th day of February 1970.