Award No. 18629
Docket No. TD-18831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

PENN CENTRAL TRANSPORTATION COMPANY
(New York and Northeastern Regions)

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

(a) The New York Central Railroad Company, (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 9 thereof in particular, when, as a result of hearing held October 7, 1968, it improperly assessed a thirty (30) day record suspension against Train Dispatcher C. J. Keator for alleged insubordination. Such charges having been based upon a false premise and not having been conclusively proven, Carrier's actions can only be deemed arbitrary, capricious and an abuse of managerial discretion and in violation of the provisions of the schedule Agreement.

(b) Carrier shall now be required to clear the record of Train Dispatcher C. J. Keator of the improperly imposed discipline.

OPINION OF BOARD: On October 1, 1968, a certain eastbound freight enroute to Weehawken Yard experienced operational difficulty and was unable to proceed under its own power. The stopping of this train caused the blocking of a road crossing at Newbridge Road. The blocking of this crossing commenced 7 hours and 50 minutes prior to the time Claimant Train Dispatcher was required to report for duty. Claimant reported for duty and devised a plan of movement for all trains concerned. Prior to the time Claimant was able to put his proposed plan into operation, Trainmaster Rodrick phoned Claimant and issued an order to Claimant concerning the movement of trains under the existing conditions which was contrary to the plan devised by Claimant. Claimant informed the Trainmaster that he would not carry out his (Trainmaster's) order until such time that the Trainmaster had consulted with the Chief Dispatcher and had been given his approval for the movement as ordered by the Trainmaster. Claimant was charged with insubordination, and after an investigation hearing was assessed 30 days record suspension. The Organization contends that the Train dispatcher had sole authority and responsibility for all train movements and that the Trainmaster is not a superior officer authorized to give orders concerning train movement to the Train Dispatcher. The Organization, therefore, contends that the act of Carrier in assessing 30 days record suspension on this Claimant was arbitrary, capricious, and unauthorized.

Carrier relies on Rule 400-N-10, which is as follows:

"Report to and receive their instructions from the Superintendent or from such officer as he may designate. * * *"

Carrier also cites a portion of page 15 of the testimony involved in the investigation as follows:

"Q. Does the Rule for Conducting Transportation state that you take orders directly from the chief train dispatcher, or does it say the superintendent or any other designated officer?

A. It states Superintendent or such officer as he may designate.

Q. Hasn't it been the practice for many years that the trainmaster is a designated operational officer on certain territories?

A. Yes."

Carrier alleges that the above testimony clearly shows that Claimant was aware of the fact that the Superintendent had designated the Trainmaster as an operational officer and, therefore, was insubordinate in refusing to obey an order when he knowingly refused to obey the Trainmaster's order.

In resolving this dispute, this Board has given great weight to the above quoted testimony of Claimant. In this testimony, Claimant admits not only the fact, but knowledge of the fact, that the Trainmaster was a designated operational officer. With this knowledge, Claimant refused to obey the involved order. Therefore, Carrier had no alternative but to invoke disciplinary procedure against Claimant for insubordination. This Board further finds that the assessed punishment was not arbitrary or capricious. Therefore, this Board is without authority to disturb the decision of Carrier in this instance.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.

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