

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19411
Docket Number TE-19627

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Formerly Transportation-Communication Division, BRAC

PARTIES TO DISPUTE:

(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company, T-C 5837, that:

1. Carrier acted in an arbitrary and capricious manner and violated the Agreement between the parties when on June 22, 1971, it suspended Train Dispatcher G. L. Wright from service pending investigation.

2. Carrier further violated the Agreement between the parties when on Wednesday, June 30, 1971, it conducted a formal investigation and: 1. failed to state a precise charge or charges in notices to Claimant; 2. prejudged the case by removal from service of Train Dispatcher G. L. Wright, pending investigation, and allowed other principals in the investigation to remain in service; 3. injected certain extraneous material into the transcript completely irrelevant to the case at hand thus denying due process; 4. failed to conduct a fair and impartial investigation as is evidenced by the interrogating officer asking certain questions at the conclusion of the investigation; 5. the investigating officer did not overrule, disagree or take exception to objections made by the representatives of Claimant, thus they were accepted as being proper objections.

3. As a consequence Carrier shall:

(a) Clear the service record of Train Dispatcher G. L. Wright of the charge and any reference in connection therewith.

(b) Promptly restore Train Dispatcher G. L. Wright to duty with seniority, vacation and other rights unimpaired.

(c) Pay Train Dispatcher G. L. Wright the amount of wages he would have earned absent the violative act, less outside earnings.

(d) Pay Train Dispatcher G. L. Wright any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of the death of Train Dispatcher G. L. Wright, pay his estate the amount of life insurance provided for under

said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.

(e) Pay Train Dispatcher G. L. Wright interest at the statutory rate for the State of Virginia for any amounts due under (c) hereof.

OPINION OF BOARD: This is a discipline case involving the dismissal of Train Dispatcher G. L. Wright, Claimant, following a hearing held on June 30, 1971. Based on the evidence presented at the hearing, Carrier found Claimant responsible for a collision between the light engines of a local freight and a tie tamping machine. About \$25,000 in damage to Carrier's property resulted from the collision.

We find against Claimant's substantive contentions, which are set forth in paragraphs 1 and 2 of the claim, and, hence, there is no necessity to consider Claimant's contentions in paragraph 3 of the claim.

The hearing on the collision showed that the Claimant, a Train Dispatcher with twenty and one-half (20½) years service, was on duty on June 22, 1971 as Train Dispatcher, Christiansburg District, Radford Division, Virginia. His duties at the time made him responsible for the movements of both the light engines and the tamping machine involved in the collision.

During the morning of June 22, 1971, Train Dispatcher Wright, by phone, gave Mr. J. R. Lytton, the Assistant Section Foreman in charge of the tamping machine, clearance to operate the machine on the westward main track near Mile Post N271.8 between Glenvar and Singer, Virginia. The clearance was given with expiration times of 9:00 AM, 10:00 AM and 11:00 AM, with the Assistant Foreman having the responsibility to telephone at times prescribed by the Dispatcher in order to obtain further clearance or instructions from the Dispatcher.

At 10:55 AM, with five (5) minutes remaining of the 10:00 AM to 11:00 AM clearance period, the Assistant Foreman spoke on the phone with Dispatcher Wright. The pertinent part of this conversation, as testified to by Assistant Foreman Lytton, is as follows:

QUESTIONS TO AND ANSWERS OF MR. J. R. LYTTON (ASSISTANT SECTION FOREMAN)

Q. When did you call the dispatcher again?

A. At 5 minutes to 11:00 I spoke to the dispatcher right at Mile Post 271.8.

Q. What conversation did you have with the Train Dispatcher at this time?

A. I told him that this was Lytton on his westbound between Glenvar and Singer. At this time he asked if a light crew was by me. My reply was yes, on the eastbound. His reply was 'oh my goodness, I have got one on the westbound' and I called to the men to get off the piece of machinery and try to flag the train. He asked me if we could get

"in the clear. I told him we would have to go to Singer. At that time I looked up and the light of the engine was right at me. I dropped the phone and ran."

All important elements of Dispatcher Wright's version of this conversation coincides with Mr. Lytton's testimony.

QUESTIONS TO AND ANSWERS OF MR. G. L. WRIGHT (CHRISTIANSBURG TRAIN DISPATCHER)

- "Q. Mr. Wright, on date of June 22, 1971, did you give permission to Assistant Section Foreman Lytton for N&W Tamper No. 12152 to occupy the westward main track between Singer and Glenvar at Approximately 10:55AM?
- A. No Sir, I gave him the track before then he was to call me at 11:00AM.
- Q. Did he call you Mr. Wright?
- A. He called me a few minutes early, 10:55AM or just a few minutes prior to the incident.
- Q. What did you say to Mr. Lytton at this time?
- A. I told him I turned a set of light engines up the westbound and wanted to know if he could get in the clear. He said he would have to go to Singer. I asked him if he could flagg the engine down, and he says 'I don't know I think I hear him coming'"

In addition to this testimony, it is pertinent to note Mr. Wright's description of his duties as a Dispatcher.

QUESTIONS TO AND ANSWERS OF MR. G. L. WRIGHT

- "Q. Mr. Wright, what is the duties of a Dispatcher?
- A. Dispatch from terminal to terminal handling them over trackage mostly by CTC control and you are supposed to keep maintenance men working and protect them and keep train running at the same time.
- Q. It wouldn't have been necessary for the engine crew and train crew to question whether the track was clear after he got a clear signal?
- A. No I would say it wouldn't."

Carrier suspended Dispatcher Wright from service at 12:30PM on the day of the collision. The record also shows that Carrier took Dispatcher Wright out of service, because of nervousness, for the period March 11, 1971 to June 8, 1972, at which time he was reinstated by Carrier's doctor.

On the basis of the above and other evidence taken in the evidentiary hearing of June 30, 1971, the Carrier found Mr. Wright responsible for the collision and dismissed him from service.

RULING ON PETITIONER'S CONTENTIONS

The Petitioner has pressed Mr. Wright's claim with admirable vigor. A comprehensive brief, containing a number of contentions in support of the claim, has been submitted by Petitioner; however, after careful consideration of all matters presented, we conclude that Petitioner's contentions are not supported by the record.

Since the Carrier has discretion to hold an employee "out of service pending investigation (Rule 11-1/2 of applicable agreement), we find no reason in this case to conclude that Claimant's suspension, pending hearing, amounted to a prejudgment by Carrier. Similarly, we do not find any legal defect in the written instrument which stated the charge against Claimant. Though such instruments can always be drafted in a variety of ways, the instant instrument contained a body of information sufficient to apprise Claimant of the subject of the inquiry and to permit him to prepare his defense. Furthermore, throughout the entire proceedings in this matter the Claimant's substantive and procedural rights have been honored by the Carrier and we therefore expressly find that Claimant was accorded a fair and impartial hearing.

We conclude further that the record contains substantial evidence to support the Carrier's findings on the charge against Claimant and assessment of discipline therefor. Petitioner's contention of responsibility on the part of other employees has no bearing on the matter. Claimant has been charged and disciplined for his own actions, not for the actions of other employees. Moreover, it is well settled that the Board's powers to reverse or modify a Carrier's disciplinary decision cannot be invoked unless the Carrier's decision amounts to an abuse of discretion. A thorough search of the record before us discloses no basis for finding an abuse of discretion and, accordingly, we must sustain the Carrier's disciplinary decision.

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;

Award Number 19411
Docket Number TE-19627

Page 5

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:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.