

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19504
Docket Number TD-19549

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (American Train Dispatchers' Association
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

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

Train Dispatcher I. C. Stone be reinstated immediately as a train dispatcher with all rights restored and be compensated for all time lost, beginning at 3:01 p.m., Friday, February 27, 1970 because of Carrier's action in disqualifying I. C. Stone as a train dispatcher in violation of Article 9 of the effective agreement.

OPINION OF BOARD: This is a discipline case in which claimant was disqualified as a train dispatcher as a result of charges preferred against him on March 3, 1970, reading:

"Please arrange to attend a Formal Hearing, in the Office of Supervisor of Operating Rules, Friday, March 6, 1970 at 9:30 A.M. to develop your responsibility, if any, regarding the following charges:

1. Your failure to instruct Operator at New Lexington that you were going to run Mine Run engine 7226-7131 from Corning to Claybank after you had issued message to Extra 3031 south to the effect that the track between New Lexington and Corning was clear on February 25, 1970.
2. Your failure to annul message issued to Extra 3031 south to the effect that the track between New Lexington and Corning was clear before permitting Mine Run engines 7226-7131 north to depart Corning on February 25, 1970.
3. Authorizing movement of Mine Run engines 7226-7131 north between Corning and Claybank after issuing message to Extra 3031 south to the effect that the Main Track was clear between New Lexington and Corning on February 25, 1970.

- "4. Violation First Paragraph Rule 400N10 which reads in part: 'they are responsible for transmitting and recording Train Orders as prescribed by the rules; for issuing such other instructions as may be required for the safe and efficient movement of trains, etc.' on February 25, 1970.

You may, if you so desire, furnish witnesses and be accompanied by representatives of your own choosing, without expense to the company."

The hearing was rescheduled and held on March 9, 1970, a transcript of which has been made a part of the record.

We can find no proper basis for the contention of the Petitioner that claimant was tried twice for the same offense and thus placed in double jeopardy. No statements were taken at the previous hearing scheduled for March 3, nor was claimant placed under interrogation. There is no showing that a decision was made as a result of those proceedings. Neither do we find any basis for the contention that the notice of March 3, 1970, did not constitute a precise charge under the agreement. It is clear what the claimant was charged with, and the time of the alleged offense. The notice was sufficient to enable claimant to prepare a defense. None of claimant's substantive procedural rights were violated by the manner in which the hearing was conducted.

It is noted from the record that the claim was progressed to the Superintendent, Labor Relations and Personnel, the highest appeals officer of the Carrier. The record contains no written declination of the claim, but the Carrier states that it was denied verbally.

From our study of the entire record, including the transcript of the hearing, it is our finding that claimant failed to fully meet his responsibility as a train dispatcher under that portion of Rule 400N10 quoted in the charge. However, there does appear to be extenuating circumstances. The record is not clear as to the responsibility of the block operator in a situation of the kind here involved.

We understand from the record that claimant had worked for the Carrier for some 28 years as a train dispatcher, and there is no record of prior discipline against him. Under all the circumstances involved, permanent disqualification as a train dispatcher was excessive discipline. We shall, therefore, award that he be restored to the service as a train dispatcher, with his former seniority as such, but without pay or any difference in pay suffered by him since his disqualification.

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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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1972.