NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19919
THIRD DIVISION Docket Number TD-20131

Burl E. Hays, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Georgia Railroad

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

(a) The Georgia Railroad (hereinafter referred to as "the Carrier") violated the currently effective Schedule Agreement between the parties, Article 8 thereof in particular, by its action in imposing discipline upon Train Dispatcher A. L. Hall, Sr., based upon charges made against him on August 16, 1972, and hearing held pursuant thereto.

(b) The Carrier shall now rescind the disciplinary action taken and clear the record of Claimant A. L. Hall, Sr.

OPINION OF BOARD: Train Dispatcher A. L. Hall, Sr., following an investigation, was assessed thirty demerits by Carrier for alleged failure to comply with Operating Rules F and 751 which resulted in delay to Work Extra LO25 at Greensboro, Georgia, on August 11, 1973.

The American Train Dispatchers Association, on behalf of Claimant Hall, asks that Carrier rescind the disciplinary action and clear Hall's record on the following grounds:

1. The evidence fails to prove that Claimant Hall was in violation of Rules F and 751 of the Operating Rules.

2. Extenuating circumstances existed, in that Claimant was not informed of work to be performed by Work Extra 1025, as he should have been.

3. Claimant was not accorded a fair and impartial hearing because the conducting officer of the hearing "coached" a Carrier witness.

After careful reading of Statements of the Organization and Carrier, and especially the evidence taken at the hearing, the Board is of the opinion that the evidence adduced at the hearing substantiated the charge against Claimant, thereby warranting discipline.

As to the alleged "extenuating circumstances" referred to by the Organization, we feel that it was Claimant's responsibility to properly supervise the movement of the Work Extra, and if he had done so, he would have been informed "of work to be performed by Work Extra 1025, as he should have been."

Finally, as to the Organization's position that claimant was not accorded a fair end impartial hearing, although the officer conducting the investigation was quite persistent, we do not believe this constituted prejudice, and we do not think Claimant was deprived of due process of law in any way.

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.

A W A R D

Claim denied.

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

LABOR MEMBER'S DISSENT TO AWARD NO. 19919. DOCKET TD-20131
REFEREE HAYS

Award NO. 19919 correctly states the discipline resulted from a delay to Work Extra 1025 and correctly states the Organization's three grounds for requesting rescinding of the discipline assessed. Thereafter, the Award is not correct.

The Award states:

> " * . * After careful reading of Statements of the Organization and Carrier, and especially the evidence taken at the hearing, the Board is of the opinion that the evidence adduced at the hear-ing substantiated the charge against Claimant, theraby warranting discipline."

Taken alone, such a statement right have weight and/or merit, but following this statement. the Award reads:

> "As to the alleged 'extenuating circumstances' referred to by the Organization, we feel that it was Claimant's responsibility to properly supervise the movement of the Work Extra, and if he had done so, he would have been informed 'of work to be performed by Work Extra 1025, as he should have been."

Finding it was "Claimant's responsibility to properly supervise the movement of the Work Extra", and if he had done so, he would have teen informed "of work to be performed by Work Extra 1025, as he should have been" imputes a need for clairvoyance in this case. The Road Foreman of Engines, the man in charge at the derailment on Work Extra 1025, when asked:

> "Do you know whether or not anyone informed the train dispatcher that the Work Extra would have to go to Greensboro with this car?",

replied:

> "No, I don't know if anyone told the dispatoher that I was going to leave there at this time to come to Greensboro . . . ".

This followed the Road Foreman's statement that:

> "I knew when we got things together, I don't know whether it was 5:09 or not, that we'd have to come to Greensboro and set off a bad order car, and go back with the wrecker."

The hearing transcript plainly shows noither the Claimant nor the Assistant Chief Dispatcher (Claimant's immediate superior) was informed by tho Road Foreman of Engines (the man in charge cf the wrecker) nor the Superintendent of Transportation (who conducted the investigation) tho wrecker train would have to leave the derailment, haul a bad order oar to Greensboro, and return to the derailment.

Earlier in the Award it was recognized the Employes' objection was to the oonduoting officer of the hearing coaching a Carrier witness. But Award No. 19919, in closing, states:

> "Finally, as to the Organization's position that claimant was not accorded a fair and impartial hearing, although the officer conducting the investigation was quite persistent, we do not believe this constituted prejudice, and WE do not think Claimant was deprived of due process of law in any way."

The issue of being donied a fair and impartial hearing because of the coaching of Carrier's witness by the oonduoting officer was not mat.

I must dissent.

J. P. Erickson
Labor Member