NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20264
THIRD DIVISION Docket Number TE-20222

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employes
((formerly Transportation-Communication Division, BRAC)
PARTIES TO DISPUTE: (
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Long Island Rail-Road, T-C 5872, that:

1. Carrier violated the Agreement when it issued discipline of 30 days suspension against Train Director R. E. O'Flaherty and in addition disqualified him as a Train Director at Divide Tower without just cause.

2. Carrier shall be required to pay Claimant for all days lost due to his suspension (30 days) and also the difference between the pay of Train Director at Divide Tower and the extra man's rate of pay every day until this matter is settled. The Union also demands Claimant be reinstated as Train Director at Divide Tower.

OPINION OF BOARD: Claimant was the regularly assigned relief Train Director at Divide Tower. Claimant has a number of years of service with Carrier, however he had held the position of Train Director at Divide Tower for approximately six (6) years at the time of the incident.

On July 18, 1972, Claimant overlooked delivering Train Order No. 124. The Conductor contacted Claimant as to the work lineup. The Claimant gave the Conductor necessary work information, and in doing so, overlooked the Train Order. This oversight occurred at approximately 10:05 p.m. Almost immediately thereafter, the Train Dispatcher inquired as to the time Train Order No. 124 was delivered. Claimant advised that he had overlooked it, and was told by the Train Dispatcher to deliver the Train Order to the crew at "BK." The delivery was completed at LO:23 p.m. At 10:47 p.m., Claimant was removed from service.

Thereafter, Claimant was charged with a violation of certain operating rules concerning his oversight. After investigation, Claimant was suspended from work for thirty (30) days and disqualified as a Train Director, but only at Divide Tower.

There is no question that, in fact, Claimant did violate operating rules concerning his failure to properly deliver the Train Order.

Basically, this dispute concerns the swerity of the punishment which the Organization claims to be excessive.

In this regard, the Organization states that the Carrier had not given Claimant prior notice that disqualification would be under consideration and that it was improper to disqualify the Claimant based upon a disciplinary hearing. The Organization cites as authority, Award 14063 and 16674. We note that in Award 14063, the claim was sustained based on certain procedural matters, but the Award stated that disqualification can properly be imposed as a form of discipline. In Award 16674 the claim was sustained because, in the judgment of the Board, there were extenuating circumstances.

We note, however, certain Awards Which have held that disqualification is an appropriate means of discipline. See, for example, Award 13854 and 13668.

We do not conclude that punishment of disqualification is improper disciplinary action. Certainly, when an employee is dismissed from service for an infraction of an operating or safety rule, the Carrier is, in point of fact, stating that the employee is disqualified from any further service with the Carrier.

Carrier asserts that its action was appropriate because, concededly, Divide Tower is a vary busy and crucial operating post and that Claimant's inability to properly perform his job on the date in question,- coupled with prior disciplinary action (all dealing with violation of operational requirements)-justifies its determination to disqualify the Claimant from the tower in question, without a disqualification from performance of duty in other towers which are less demanding.

We note, with favor, the conclusions of Award 13854:

> "We will not substitute our judgment for Carrier's in this respect unless Carrier has been arbitrary, or capricious and has abused his discretion in assessing the penalty... Reasonable men might not all agree that Claimant should have been demoted in light of the penalty imposed on him by the accident itself; but Carrier's decision to demote him was clearly not arbitrary or capricious; it was one possible course of action which might reasonably be expected to contribute to minimizing the possibility of recurrences of such accidents..."

We also note in Award 13854, that the Board held that there was no rational basis for adding a suspension to the demotion. In the instant dispute, the Carrier has attempted to explain the rationale for the 30-day suspension in its Ex Parte Submission to this Board, however, the correspondence handled on the property makes no reference to justification for the suspension; but rather, limits itself to a consideration of the propriety of the demotion. In accordance with Award 13854, we will sustain the claim to the extent of requiring that Carrier make Claimant whole for wages he lost by reason of the thirty (30) day suspension. We will not disturb the Carrier's determination to disqualify Claimant as Train Director at Divide Tower.

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 violated.

A W A R D

Claim sustained to the extent stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.