

NATION&L RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21719
Docket Number TD-21813

James F, **Scearce**, Referee

PARTIES TO DISPUTE: ((American Train Dispatchers Association
(Louisville and Nashville Railroad Company

STAT- OF CLAIM: Claim of the American Train Dispatchers Association
that:

(a) The Louisville and Nashville Railroad Company (hereafter referred to as "the Carrier"), violated the effective schedule Agreement between the parties, Article IX thereof in particular when on March 26, 1975, by letter it dismissed Train Dispatcher W. W. Greene from its service as a consequence of investigation held on **March 4**, 1975.

(b) The Carrier shall-now clear Claimant W. W. Greene's record of the charge, **reinstate** him to his former position and compensate him for net wage loss plus interest and he be fully reimbursed for all **out-**of-pocket expenses incurred by him because of loss of welfare and fringe benefits, while so dismissed.

OPINION OF BOARD: On January 24, 1975, shortly after starting work at 7:00 a.m., Claimant was involved in an incident which permitted the movement of a train, Extra 1414 North, without a complete set of Train Orders. Claimant, a dispatcher located at **Latonia**, Kentucky, overlooked the inclusion of Train Order **#553** when contacted by Agent/Operator D. R. Butler, who was located at **Ravenna**, Kentucky,

The Union raised, as an issue in the handling of the case, certain deficiencies in the timely responses by the Carrier to notices and requests. The record indicates to the contrary; more importantly, they have not been forwarded to this level and are, therefore, considered resolved or dropped.

The Union **raises** as an issue disparate treatment of the Claimant relative **to** others who, in one way or the other, also failed to respond properly **to** the deficiency of the **missing** Train Order, It is a **well-established principle** in resolution of disputes of this type, that one's errors cannot be excused by pointing a finger elsewhere. This principle is well **documented** in past awards in the Division; therefore, we cannot give weight to this issue.

The Union has raised as a defense the "hazardous working conditions" attendant to the Agent/Operator at **Ravenna**, Kentucky. It proposed that this condition had a detrimental effect upon the **Claimant** when the error was "**passed-thru**" to the Latonia dispatcher. The fact is that the Claimant had a superior obligation to catch the Agent/Operator's error, since a primary duty as a dispatcher is to ensure the proper issuance of Train Orders. It is enough to say that the Claimant was not a victim of an error which, by his own job duties, necessitated that he be aware of the train orders in advance of the Agent/Operator. This does not deny nor does it affirm the presence of adverse conditions for the Agent/Operator at **Ravenna**; perhaps corrective actions are necessary, but we cannot accept the contention that the Claimant was adversely affected by such circumstances.

The Claimant, a veteran of thirty years, was obviously a good **employee** overall. No evidence was presented of less than quality service until 1970 when he was dismissed for failure **to** protect movement of a track **car**; he was subsequently reinstated **on a** leniency basis. In July of 1974 he was again dismissed, this time authorizing movement of a track car against an opposing train. Claimant was again reinstated, after the dismissal was downgraded to a **suspension on** a leniency basis, on January 13, 1975. It should be noted that this second return to work came only eleven days before the incident which prompted this claim.

The Union claims that the action of the carrier is punitive. In reviewing the recent infractions by the Claimant, the record does not substantiate such contention. He was dismissed in 1970 and reinstated on a leniency basis after about a month; he was again dismissed in 1974 and reinstated in 1975 on a leniency basis, after **six** months. The **Carrier's** action **in** this case was not out of the **ambit** of reasonableness, considering its disposition of previous infractions by the **Claimant**.

Nevertheless, the Carrier responded to the entreaty of the **claimant and** the Union in October and November of 1975, agreeing to re-instate the Claimant, thereafter agreeing to provide the basis for **him** to qualify for a 1976 vacation, and finally, to permit him to process his **claim** for losses incurred during the period of **suspension**. The Claimant chose instead to consummate a plan underway to retire, and thereafter pressed his claim for losses incurred by the dismissal.

Firstly, it is clear that the demand as set out by the Union for his reinstatement is no longer valid--the claimant is in retirement by his own choice. There is, however, the demand for losses incurred, plus interest. We are not so moved. What is altogether proper, however, is the downgrading of his dismissal to a period of suspension, to be terminated on November 4, 1975, by his retirement. It is so ordered, with the accretion of any benefits and credits that may be due him by this change of status, for that period.

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

The Agreement was violated to the extent that the dismissal was too harsh for the period of March 26, 1975, to November 4, 1975.

A W A R D

Claim sustained to the extent indicated in the **Opinion and Findings**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.