

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21897  
Docket Number TD-21781

James F. Scarce, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Indiana **Harbor** Belt Railroad Company

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

Appellant Train Dispatcher G. M. Burlbutt's record be cleared of reference to the incident involved in the investigation held December 22, 1975 and that he be compensated **for** all time lost (suspended from service December 16, 1975 through January 14, 1976) in connection therewith.

OPINION OF BOARD: Claimant was second trick train dispatcher for the Carrier on December 15, 1975, when the events occurred that prompted this dispute. The Claimant was disciplined for his responsibility in permitting two trains to oppose each other on the same track, requiring both to be stopped to avoid a collision.

Three issues related to the dispute were placed before this Board:

- (1) The Organization's claim that the charge against the Claimant was imprecise.
- (2) The Company's charge that the dispute was not handled according to the Agreement.
- (3) The question of culpability, if any, on the part of the Claimant in the incident itself.

They will be dealt with in that order.

1. Precision of the Charge

Following the incident and on December 17, 1975, a letter was sent to the Claimant (as well as others who may have been involved in the incident) which read:

"Please arrange to report to the Conference Room, fourth floor, Gibson General Office Building, Indiana **Harbor** Belt Railroad, **2721-161st** Street, **Hammond**, Indiana at **8:30** a.m., Friday, December 19, 1975, for an investigation to develop the facts and determine your responsibility, if any, in connection with Milwaukee Train 8100,

"Chicago, Milwaukee, St. Paul and Pacific Engine 947, moving east on #1 Track between Argo and Chicago Ridge and B&O Extra West, Baltimore & Ohio Engine 6584, moving west on #1 Track between Chicago Ridge and Argo, about 7:00 p.m., Monday, December 15, 1975, resulting in Milwaukee Train 8100, Chicago, Milwaukee, St. Paul & Pacific Engine #947, and B&O Extra West, Baltimore & Ohio Engine 6584, being stopped on #1 Track in the vicinity of 91st Street to avoid collision."

As a result of that investigation the Claimant (and others) were disciplined. The specificity of the details related to the basis for the hearing, as contained in the Superintendent's December 17 letter to the Claimant, can leave little doubt that the Claimant was aware of the purpose of the hearing and the probable basis for the charges.

The Board finds no merit to the Organization's claim of imprecision here.

## 2. Handling of the claim

The Company contends that the Organization was obliged to process the grievance in a manner which would involve appeal to a company official of inferior rank to the officer rendering the disciplinary decision. It bases its contention on Article 11 of the Agreement between the parties then in effect, characterizing the Organization's appeal as a "claim". The Organization argues that the grievance is over the disciplinary action taken by the Company and is properly progressed under Article 9 - Discipline. In view of the fact that the Superintendent conducted the hearing under Section (b) - Hearings, of Article 9, and that the decision was not satisfactory to the Organization, the Organization argues that it is entitled to advance the case to the "next higher official" according to Article 9 (c) - Appeals.

Since the case is disciplinary in nature, notwithstanding that a claim for reinstatement of lost wages and benefits may accompany it-- and since the initial decision was made by the Superintendent, the position of the Union in this issue is found to prevail. Thus, the Board finds that the Organization was not required to process this dispute under the provisions of Article 11.

## 3. The Claimant's responsibility in this incident

The Union contends that the Claimant was not at fault for permitting the trains to oppose each other on the same track.

Briefly, the incident occurred when a train--CMStP&P (hereafter referred to as 947), traveling east on No. 2 track of two parallel tracks was **permitted** to divert to the other track (No. 1) in order to get around a switching engine ahead of it (east of it) on Track No. 2. Traffic westbound on Track No. 1 was stopped at a point sufficiently eastward to **permit 947** to divert to Track No. 1 and, at an appropriate point, return to Track No. 2. After having issued Train Order No. 5, the **Claimant** was advised by an Operator at a tower (**McCook**) west of the point where 947 was to **commence** the diversion to Track No. 1 (at the Argo Tower) that 947 would be delayed "a little bit." **Meanwhile**, westbound Extra B&O 6584 (hereinafter referred to as 6584) traveling on Track No. 1 reached the point where it was blocked **from** further advancing (Chicago Ridge Tower) by Train Order No. 4. Apparently based upon the understanding that 947 was not advancing (due to cross traffic), the **Claimant annulled** both Train Orders 4 and 5 opening Track No. 1 for westbound travel, thus **permitting 6584** to continue its westward course. The **Claimant** took this action at the same **time** that 947 was **completing** its **maneuver** to Track No. 1--in other words his actions **annulling** Train Orders 4 and 5 were not executed in **time** to counteract their intent and thus 947 and 6584 were opposing each other on Track No. 1. A series of contacts by the **Claimant** after **becoming apprised** of the situation halted the trains before collision.

The Union contends that the operator of Argo is totally at fault because he was **made** aware of the **Claimant's** intention to annul Train Orders 4 and 5 before Train 947 was past his area of jurisdiction; in other words, the Argo operator should have either: (1) advised the **Claimant** that 947 was already into its diversion to **Track 1** and thus precluded the **annulment** of Train Orders 4 and 5, or (2) notified 947 at the rear end, thus halting its maneuver, clearing No. 1 track for westbound traffic.

A careful review of the actual discussions between the **Claimant** and the various tower operators--specifically Chicago Ridge, **McCook** and Argo--fails to support the Union's position. The salient points of the discussions are reviewed as follows:

5:20 p.m. Train Orders 4 and 5 are issued

6:34 p.m. **McCook Tower:** "The C&A is going to nail the skunk for a little bit."

(Comment : C&A is a tower between **McCook** and Argo where the switching **maneuver** was to **commence**. The "skunk" is a reference to the CMStP&P and refers to Train 947. Thus, **McCook** tells the **Claimant** that the C&A tower operator is holding up the 947 for an unspecified period of **time**.)

6:34 p.m. Claimant responds: **"Alright"**.

6:36 p.m. Chicago Ridge: "What is this westbound I got holding here?"  
Claimant: "That's the B&O 6584 with 65."  
(**Comment:** At this point in time 6584 has reached the point where Train Order No. 4 halts its advance on Track No. 1 to permit 947 to make its diversion.)

6:47 p.m. North Harvey: "Is the South Eastern getting close to the Ridge yet?"  
(**Comment:** Another tower operator, east of where 6584 is being held at the Chicago Ridge Tower inquires if 947 is approaching Chicago Ridge.)

6:47 p.m. Claimant: "Be is just about ready to go by Argo."  
(**Comment:** The Claimant seems to be aware that 947 is underway, even though the last apparent word he had on 947's status was from the **McCook** operator **at 6:34 p.m.**)

6:53 p.m. (Claimant rings both Argo and Chicago Ridge Towers: both respond.)  
Claimant: "Ridge, Let's bust that South Eastern Order."  
Claimant: "Argo, Let's bust this Order No. 5."  
(**Comment:** Both remarks mean the same thing. South eastern is another reference to Train 947 **and**, in essence, the Claimant is alerting both tower operators that another train order is forthcoming.)  
Argo operator: "OK."  
Thereafter, Claimant issues Train Order No. 6; both Argo and Chicago Ridge operators repeat the orders and the Chicago Ridge Operator releases 6584 to proceed on Track No. 1 westward.

7:00 p.m. Argo operator: "South Eastern by here at 7 o'clock on **#1**."  
(**Comment:** The Argo operator repeats to the Claimant that 947 has passed his point on Track **#1**.)  
Claimant: "Alright. On **#2** Track."  
Argo operator: "On **#1**."  
Claimant: **"I** thought we just busted that order."  
Argo: "Be was already gone by when you busted it."  
Claimant: "Why didn't you say something?"  
Argo: "Oh, I'm sorry."  
(Thereafter a series of contacts were made by the Claimant to halt the progress of the train toward each other.)

It is quite obvious that the Argo operator's inattentiveness to the events in progress was a key factor in this serious error, but it would be a similar error in this Board's judgment not to recognize the Claimant's own responsibility. As Dispatcher, he **assumes** the responsibility for movement of trains over his territory. In a manner of speaking, the tower operators, with line of sight observation at key locations, are extensions of the Dispatcher. But the verbatim transcript shows that the Claimant made his decision to annul Train Orders 4 and 5 based upon incomplete knowledge. He was told by the **McCook** operator that 947 was being held up for a "little bit." This is obviously an indefinite period and should have alerted the Claimant to a need for additional information regarding when 947 was underway again. And yet, fourteen minutes later, the Claimant informs the N. Harvey operator that 947 was "just about ready to go by Argo." The Claimant could not have known whether 947 was still being detained by the **C&A** tower or whether it was underway. Six minutes later and seventeen minutes after 6584 reached and was detained at the Chicago Ridge tower, the Claimant decides to annul 947's approved diversion to the No. 1 track and to permit 6584 to proceed westward on that track. The Claimant's obvious initial contact with the Argo operator, given that he had no knowledge of the extent of the "little bit" of time 947 was detained at the **C&A** tower or, indeed, what 947's location was, should have been a question--What is the status of 947? That the Argo operator either (1) took the Claimant's annulment order No. 6 after 947 was past his point of control thereafter waiting seven minutes to report it to the Claimant or (2) took Train Order No. 6 as 947 was passing and said or did nothing is inexcusable. But it is not persuasive here to suggest that the Claimant was not culpable as well. It is not unreasonable to expect a greater measure of judgment from those in higher positions of authority. No less can be expected of the Claimant here. While there may well have been supportable argument for varying extents of culpability among those involved in this matter, it is not the duty of this Board to speculate upon the appropriateness of the level or length of discipline as among those involved. This case related only to the Claimant. Our duty here is to **determine** whether just cause has been demonstrated by the Company in its decision to discipline. We find that just cause has been shown.

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;

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

The Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST:

*A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.

