

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22493**
Docket Number **TD-22436**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Chesapeake and Ohio Railway **Company**)

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

(a) The Chesapeake and Ohio Railway Company (hereinafter referred to as "the Carrier"), violated the currently effective schedule **Agreement between** the parties, Rule **8(a)** thereof in particular, by its arbitrary, capricious, and unreasonable disciplinary action in assessing fifteen (15) **calendar** days actual suspension against **Claimant** Trick Train Dispatcher E. R. Craycraft **following formal** investigation (Board of Inquiry No. 6545) conducted March 29 and April 5, 1977.

(b) Because of this flagrant violation, the Carrier shall **now** be required to clear **Claimant's** personal record of **the** charges involved in the **investigation** of March 29 and April 5, 1977 and compensate Train Dispatcher Craycraft at the appropriate punitive rate for attending Board of Inquiry **on** March 29 and April 5, 1977 at the Railroad Y.M.C.A., **Russell**, Kentucky, and proper pro rata rate for all loss of **time** and expenses **in** connection therewith.

OPINION OF BOARD: **Claimant** was instructed to attend an investigation concerning asserted "...irregularities **and** failure to properly handle and execute train orders relating to **movement** of extra 7579 **East** war **No. 2 Main Track between DG Cabin and Riverton**, which had been taken out of service by Traia Order 802, March **4**, 1977."

Subsequent to the investigation, Carrier notified **Claimant** that he was "...at fault for failure to properly annul train order No. 802 as required by the **second** paragraph of **Rule** 909 and for failure to **have** orders ready when needed as required by Role **902**." Claimant was assessed a **fifteen** (15) calendar day **suspension**.

Pertinent rules state:

"902. They (train dispatchers) must supervise the **movement** of trains, anticipating the **need** for train orders and have them ready **when** needed, but must not issue orders **an** unnecessarily long time **before** **they** are needed **nor** at points distant from where they are to be executed, if it can be avoided."

"909. They must prevent the delivery of unnecessary orders to a train by annulling such orders after they **have** served their purpose, and **must not** annul **an** order to a train or engine, unless such train or engine has **received** copies of the order annulled.

If **an** order to be annulled has been delivered, and is still in effect, the annulling order should be addressed to those who received copies of the order being annulled."

Train **Order No. 802** **turned** over No. 2 Track between DG Cabin and **Riverton** to maintenance of way forces. Extra 7579 East (Train 190) received Train **Order** 802. At 3:47 p.m., the **maintenance** of way Foreman released No. 2 Track for use by trains. Claimant was so notified, and he annulled the Train **Order** to the operators at **RJ** Cabin, **HX** Cabin and CS Cabin by **Order** 813. The order was not addressed to Extra 7579 (because it referred to other orders, as well).

The train did **not** stop at DC Cabin, so that it was **not aware** of the **annulment**; but **nonetheless**, it occupied No. 2 Track in violation of Order No. 802.

Claimant asserts that when he was notified that the train was "on the approach", he advised the **Operator** at **NJ** Cabin, **"Put him up No. 3 track - Yellow East Copy 3."** But, he received no farther response **from the Operator due to a failure of the ringing selector.**

Claimant asserts that the charge was **not** specific and that there was a variance between the notice of charge and the notice of discipline. Both parties have cited Awards in support of their positions **in** this regard.

We cannot agree that the charge was not specific. In our view, it precisely set forth an allegation to this, and other, **employees concerning a movement** over Track No. 2 by a specific train on a specific date. But, the specific **nature** of **the** charge gives us considerable difficulty **as** it relates to the assertion that **the finding** of guilt is at variance with the allegation. Surely, in each such case, a definitive ruling **may** be made only with reference to the particular facts of record. **In this** case, **we** have repeatedly reviewed the **charge**, and can only conclude **that it spoke** in terms of the **improper** movement over Track No. 2. Whether or not this Claimant's actions constituted a violation of **Rules** 902 and 909 is quite **another** matter **having** nothing to do with the allegation that the crew proceeded against **Train** Order No. 802, which Carrier insists was still operative as far as this crew was concerned. Surely, this **employee's** actions could have been scrutinized concerning the cited rules, but not when the charge dealt with a different topic.

In this regard, Award 16610 is pertinent to our **Award**. **Even** Award 3270, cited by Carrier, is pertinent because Carrier cites it as requiring a "relationship" **between** the charge and the asserted dereliction.

Finally, we invite the parties' attention to our recent **Fourth Division Award No. 3678**.

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 Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 24th day of **August 1979.**

JP 2-51