

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22549
Docket Number CL-22213

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8419) that:

(1) Carrier violated the Agreement between the parties, when on March 27, 1975, it imposed discipline of 10 days' suspension from service upon Operator C. R. Callahan as a result of an investigation held on March 13, 1975, which is contrary to justice and right, and

(2) Carrier shall be required to clear the service record of operator C. R. Callahan and compensate him for all wage losses suffered during the 10-day suspension period, from March 31, 1975 to April 10, 1975.

OPINION OF BOARD: This case is concerned with the erroneous routing of a train at a certain trackage area in Ohio shortly before 3 AM on March 12, 1975. The error was discovered almost instantaneously; the train was backed-up; and it thereupon made the proper cross-over and proceeded on the correct tracks. The resulting delay was of about 10-minute duration.

The claimant was the Block Operator (at NY Tower, East Columbus, Ohio) who was admittedly responsible for routing the train contrary to the explicit directions contained in the train order. He was an employee with an excellent record and of about nine years of service. Following investigation, he was given a 10-day suspension (which he served as shown in the Statement of Claim). The Organization is here appealing the suspension, essentially contending: 1) that the charges against the claimant were lacking in requisite precision; 2) that the penalty, in the light of the incident's harmless consequences and in the light of the claimant's superior past record, was unduly harsh.

Clearly owing to the claimant's utter straightforwardness, the investigation in this instance was of the briefest sort. Yet, the record made of it is so fully descriptive of the case and, we think, so

fully disposes of the first of the Organization's contentions, that we **will** quote the investigation transcript in its entirety:

"Q. Mr. Callahan, under date of March **12**, 1975, the following notice was sent to you: 'Please arrange to attend investigation **in B&O Train-master's** Office, Newark, Ohio, at 2:00 p.m. Thursday March **13**, 1975, to determine your responsibility, if **any**, in **connection** with delay of approximately 10 **minutes** to P.C. Train No. **31**, engine **593**, at Port Columbus at approximately **2:55** a.m. March **12**, 1975. **Arrange for representative and/or witnesses if desired.**' Were you properly notified of these charges?

A. Yes.

Q. Do you desire representation?

A. **No.**

Q. Do you desire witnesses?

A. **No.**

Q. Are you **ready** to proceed?

A. Yes.

Q. Mr. Callahan, what was your **assignment** on the date and time in question?

A. I was **working** 3rd trick Operator at **NY** Tower, **East Columbus**.

Q. Mr. Callahan, please describe in detail **all** that **you** know regarding the delay to **train No. 31**, engine **593**, at **Port Columbus** on the morning of March **12th**?

A. When **No. 31** went by Summit, I lined him up to cross over from 2 to 1 track at **Port Columbus**. When he had crossed over, he notified the Operator at Alum Creek that his orders read to East Columbus, not **Port Columbus**. I then backed him up, brought him **down** to **East Columbus** and crossed him over there.

"Q. Train Order No. 205 dated March 12, 1975, addressed to the Operator at East Columbus reads 8s follows: 'No. 31, engine 593, and Extra PC 3131 West have right over opposing trains on #2 track Summit to East Columbus, signed RHM'. And this train order shows 8s being repeated by Operator Callahan and made complete at 2:25 a.m. Can you verify this 8s correct?

A. Yes.

Q. Mr. Callahan, why then did you line No. 31 to cross over from #2 track to #1 track at Port Columbus?

A. Due to the fact that I had been crossing trains over all night on this move at Port Columbus account #1 track out of service between Summit and Port Columbus, I crossed No. 31 over the same way. This was in error due to train order reading Summit to East Columbus.

Q. Are you familiar with and do you understand in Penn Central Rules for Conducting Transportation that part of Train Order Form D-R reading: 'Under these orders the designated train must use the track specified between the points named'?

A. Yea.

Q. Are you familiar with and do you understand that part of train order form J reading: 'Approved blocking devices must be applied to switch or signal levers governing all routes to track affected' and Rule 617 reading: 'Operating levers must immediately be blocked with approved blocking devices whenever the operation of the lever is restricted'?

A. Yes, I am.

"Q. Since you have **already stated** that you lined **No. 31** to cross over 8t Port Columbus in error, instead of **at East** Columbus 8s the train order specified, did you comply with these rules **in** this instance?

A. **No.**

Q. Are you **familiar with and do you understand** that part of Rule 400 N-11 reading: 'They (Operators) are responsible for the delivery of train orders and **messages** to the persons *addressed*, **arranging** the use *of* blocks, tracks, interlocking switches, and signals **and prompt movement of trains** in accordance with the rules, train orders **and special instructions**'?

A. Yes.

Q. Did you comply with this rule in this instance?

A. **No**, but it was not intentional. It was **an error on my part.**

Q. Do you **accept** responsibility for the delay *of* approximately 10 minutes to Penn Central train **No. 31** in this instance?

A. Yes.

Q. Mr. Callahan, are you satisfied that this has been a **fair and impartial investigation** and conducted in accordance with **agreement** rules?

A. Yes.

Q. **Is** there any additional evidence which you desire to **present** in this case?

A. **No."**

We do not see how, on this record, we can properly sustain the Union's first contention. It is true that the directive to the claimant to **attend** the **investigation** is couched in terms of ascertaining whether the **claimant** should *be* held responsible for the **incident and** that the directive was subsequently used as the basis for the suspension, but there **cannot**

possibly be **any** question that the **claimant was** of complete **understanding** **as to** the offense **Management considered him** guilty of when it suspended him. To view the suspension **as** defective for lack of charge precision would be, not to hold due-process **concerns**, but to insist on form without regard for substance.

The real question in the **case** concerns the severity of the discipline. We **have nothing** but respect for the integrity with which the **claimant** conducted **himself** in the **investigation**. And we **have** not lost sight either of the **fact** of his **excellent** record or of the **fact that** his mistake **was** quickly corrected and ended up being **essentially** harmless. **But** we think the **controlling considerations** are that the **claimant's** position is one of high **responsibility** and that the **mistake** which the **claimant** made, both in that light and in the light of its **potentially** disastrous Consequences, **must be viewed as intolerable carelessness**. It is the sort of mistake **as to** which the discharge **penalty** is **by no means** **unheard-of**. We cannot properly declare the **10-day** suspension to be **excessive**.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.