

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22825
Docket Number TD-22833

Paul C. Carter, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association)
(Southern Pacific **Transportation Company**)
(Pacific Lines)

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

(a) The Southern Pacific Transportation Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect **between** the parties, Article 8 thereof in particular, by its action in assessing discipline in the form of dismissal against **Claimant** R. J. Brodie as a result of hearing held **February** 23, 1977. Said discipline is arbitrary, harsh, unwarranted, and an abuse of managerial discretion.

(b) Carrier shall now reinstate Claimant R. J. Brodie with seniority, and all other rights unimpaired, clear **Claimant's employment** record of the charges which provided the basis for said action, and to compensate **Claimant** for wage loss due to Carrier's action.

OPINION OF BOARD: The record shows that claimant entered Carrier's service as a Train Order Operator on January 17, 1967. **He** qualified as a train dispatcher on September 17, 1970. On February 18, 1977, claimant was assigned **and** working as Train Dispatcher 8:00 A.M. to 4:00 P.M. On February 17, 1977, he was cited for **formal** hearing:

'You are hereby notified to **[be]** present in the office of Chief Train Dispatcher, **Roseville**, California, at 9:00 AM, Wednesday, February **23rd**, 1977 for **formal** hearing in connection with your alleged failure to provide train orders which were in effect to Work Extra 3810 at Woodland, Tuesday, February 15, 1977, working **between Woodland and Delavan**, specifically Train **Orders** 1247 and 1266, which were in effect between these stations, which **may** involve violation of first paragraph of **Rule** 204 reading:

'Train orders **must** be addressed to those who are to execute them, naming the place at which each is to receive his copy. Those for a train **must** be addressed to the conductor, engineer, and pilot if any. A copy for each **employee** addressed **must be** supplied by the operator. '

"and allegedly 'mailing' a restricting train order to Work Extra 3810 at Yolo, care of **employee**, specifically Form Y Train Order 1266 on February 15, 1977, while serving as a train dispatcher on the Mountain District on the Sacramento Division, for which occurrence you are hereby charged with the responsibility which **may** involve violation of first paragraph of Rule 217 reading:

'A train order to be delivered to a train at a station other than a train-order office, or at a train-order office which is closed, **must** be addressed to "C&E _____ AT _____ CARE OF _____" or "C&E _____, BETWEEN _____ CARE OF _____".....'

and second paragraph Rule 217 reading:

'Orders **must** not be sent in this manner restricting superiority or movement of a train, except when combined with train order Forms G, H, Examples (1), (2), (3), or (4), or in connection with Form T.'

You are entitled to representation **and** witnesses in **accordance** with the agreement covering train dispatchers."

The hearing was conducted as scheduled and claimant was dismissed from service March 2, 1977. A copy of the transcript of the hearing has been made a **part** of the record.

From our review of the transcript of the hearing, we find that none of claimant's substantive procedural rights was violated. There was **substantial** evidence adduced at the investigation, including claimant's own statement, to support a violation of the rules.

The Carrier makes reference to claimant's prior **record**. However, the **record** submitted to **the** Board shows one prior disciplinary suspension in 1973.

Based upon the record properly before us, and the responsibility that a train dispatcher bears for the proper handling of train orders, the Board concludes that severe discipline was warranted. However, the **time** that claimant **has** been out of service should serve as sufficient discipline. We will award that claimant be restored to service **with** seniority **and** other rights unimpaired, but without any **compensation** for **time** lost while out of the service. The **claimant** should **understand**, however, that the purpose of this Award is to give him "one last chance"

to become **and** remain a responsible **employee**, and that further major infractions by him will result in the **permanent** termination of his services.

In reaching our decision in this case the Board has not considered Carrier's Exhibit "I", as it is well settled in discipline cases that the parties to the dispute and the Board itself are restricted to the testimony adduced at the investigation concerning the charge or charges against an **employee**, and neither side is free to supplement that record **subsequent** to the hearing or investigation.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1980.