

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25952

Docket Number CL-26020

John W. Gaines, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9926) that:

1. The Chicago and North Western Transportation Company violated the terms and provisions of Rule 21 of the current Clerks' Agreement when they conducted an investigation on October 31, 1983, and after the conclusion of the investigation dismissed Mr. James E. Wallace from the service of the Carrier effective November 2, 1983, and

2. The Chicago and North Western Transportation Company shall now be required to restore Mr. James E. Wallace to the service of the Carrier with full seniority and fringe benefits and payment for all wage losses sustained as provided in paragraph (c) of Rule 21 of the current Clerks' Agreement."

OPINION OF BOARD: Five of its Employees including Claimant were similarly charged, and they attended Carrier's common investigation into the situation of each as to:

"Your responsibility in connection with a near miss incident at Mayfair between Chicago and North Western Suburban Train No. 634 and Amtrak No. 330 at approximately 8:20 A.M. on October 25, 1983.'

The installation at the near-miss site at Mayfair consists of a crossover interlocking diamond or plant where Carrier's triple main line (route of Passenger Train 634) crosses a double main line, the route taken by Passenger Train 330. The interlock's function is to safeguard against crossing trains being on the diamond at the same time.

Claimant, a Relief Control Operator, was the Control Tower Operator then in control of the interlocking plant. As a result of the investigation he was dismissed for not taking all necessary precautions to protect Train 330 while he was engaged in flagging the train across the diamond.

The Hearing was complicated by twenty-one people in attendance. Included among them were members of train crews, and representatives from four necessary Crafts all operating under differing Labor Agreements and each with concerns over its own particular cause.

Substantial evidence, direct and circumstantial, established that Claimant had failed to take all proper steps insuring safety at the plant where the tracks made their crucial crossing. The evidence was strongly disputed by Claimant's repeated denials and by the Organization in their arguments asserting conflicts in the overall evidence.

In absence of partiality or bias, we are reluctant to substitute our evaluation for the Hearing officer's determination of guilt. This record supports his determination.

The Organization contends that the Investigation was partial, that Claimant's cause was not treated with fairness, and that Carrier failed to call all witnesses including another crew and failed to introduce radio records and tapes of interviews.

The contention seems insubstantial in the face of this Hearing record embodying 240 pages of transcript. The Hearing Officer supplemented this evidence by recessing, and distributing copies of early statements taken from the various employees involved in the proceeding.

Safety is so vital to the operation of a Carrier that leniency or severe discipline rests largely in the discretion of the Carrier as here, where guilt is found for a safety violation in a crucial situation.

We will not sustain the Claim. The discipline by dismissal was appropriate to the finding; the investigation leading to that finding was conducted without partiality and without depriving Claimant of substantive rights; and Claimant was extremely ably represented.

FINDINGS: The Third Division of the Adjustment board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

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:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.