

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26216  
Docket Number TD-26220

John E. Cloney, Referee

(American Train Dispatchers Association  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"System Docket No. CR-242  
Central Region-Youngstown Division

Appeal from discipline of ten (10) days actual suspension (time out of service to apply) assessed K. M. Erdner."

OPINION OF BOARD: On January 26, 1984, at about 1:30 P.M. Claimant authorized Foreman Jones to occupy Track 2 between Akron and Warwick, Ohio with Track Car 9085. The authority was issued by telephone to Goodwin, the Operator at Warwick for relay by radio to Jones. After occupying the track Jones noted Track 2 was lined up for a conflicting movement by a B & O train. He made radio inquiry to Goodwin who in turn attempted to reach Claimant. When he couldn't do so, Goodwin authorized Jones to occupy Track 1. In a later conversation with Claimant Goodwin mentioned that Jones was on Track 1. Claimant then changed his authorization form to read No. 1 Track. He did not initiate a new Form.

Later that evening the Supervisor Train operations, Crelin, called Claimant at home and informed him he was being held out of service. On January 27, 1984, Crelin wrote Claimant that:

"Notification is hereby given that you are held out of service beginning 5:06 P.M. Thursday, January 26, 1984 in connection with the improper CT-401 track car authority issued at 1:01 P.M. Thursday, January 26, 1984 to track car 9085 at Arlington, Ohio."

On January 30, 1984, Claimant was notified to attend a Hearing on February 2, 1984, in connection with:

"1. Your failure to issue proper CT-401 track car authority to MofW Foreman D. L. Jones on track car No. 9085 to occupy No. 1 track between Akron and Warwick at approximately 1:30 PM, Thursday, January 26, 1984 after being advised of track car No. 9085's movement on No. 1 track. Violation of Rules 805 and 806 of the Conrail Rules of the Transportation Department.

2. Your failure to report first trick Warwick operator L. E. Goodwin's violation of rules 805 and 806 in allowing track car No. 9085 to proceed from Akron to Warwick on track No. 1 without proper CT-401 track car authority when notified of movement of track car No. 9085 on No. 1 track at approximately 1:30 PM, Thursday, January 26, 1984. Violation of Rules D and 906 of the Conrail Rules of the Transportation Department."

At the Hearing Claimant testified that in a conversation with Goodwin regarding the B & O train at about 2:10 P.M. on the day in question Goodwin said the rail car was on T-track 1. Claimant thought he had made an error so he corrected his book to read Track 1. He denied knowing any problem existed until Crelin called him.

Crelin testified proper procedure when changing track designation is to issue a new 401 Form. He also testified he was sure Claimant was not aware an incident had occurred until he called to notify Claimant he was being taken out of service. Jones testified Goodwin instructed him to change his Form from Track 2 to Track 1.

Goodwin testified that when he first learned of the situation from Jones he tried to reach Claimant on the "hot line" as well as by commercial phone but the line was continually busy. Accordingly he checked for conflicting traffic and then told Jones to change his Form to Track 1. He had not informed Claimant at that time but testified he did so during the tour of duty saying "At some point . . . I don't remember when I did advise (Claimant) as to my having altered the 401."

On February 6, 1984, Claimant was notified he would receive as discipline "Ten days actual suspension (Time out of service to apply)."

The Organization contends Claimant did no more than correct what he thought was his own clerical error and did not issue a change because he thought Goodwin's copy showed Track Number 1 throughout. Further, Claimant could not have reported Goodwin's violation of Rules because he was not aware there had been a violation until he was called by Crelin.

Carrier asserts that at the Hearing it was established by substantial evidence that Claimant violated Rules 805, 806, D and 906 of the Rules of the Transportation Department. These Rules deal with authority for the movement of cars, completion of Forms and the immediate reporting of violations of the Rules.

"Rule D provides:

"**Employees** must devote themselves exclusively to the **Company's** service while on duty, render every assistance in their power in carrying out the rules and special instructions, and promptly report any violation to the proper official.

To remain in the service, employees must refrain **from** conduct which adversely affects the performance of their duties, other employees, or the public. **They** must refrain **from** conduct which discredits the **Company**."

Rule 18 of the Agreement, dealing with Discipline, Hearings and ~~Ap-~~peals provides in Section 1(b):

"An employee may be held out of service pending hearing only if his retention in service could be detrimental to himself, another person, or the **Company**."

On February 6, 1984, Claimant was notified he **would** receive "ten days actual suspension (Time out of service to apply)."

Whether this **Board** given the evidence produced at the Hearing, would have reached the same decision as did the Carrier is not the question. The scope of our review was defined in Third Division Award 18550 thus:

"**This Board** will not weigh the evidence adduced at the hearing nor resolve conflicts . . . . **We** will not disturb Carrier's decision where it is supported by substantive evidence and not arbitrary or capricious . . . ."

Further, Awards **too numerous** to require citation establish that this **Board** will not attempt to resolve conflicting testimony. Given **Goodwin's testimony** that he had advised Claimant of the altering (emphasis supplied) of the 401 **we** must conclude Carrier had a substantial basis for its decision and the decision was not arbitrary or capricious.

But this does not end the matter.

**Rule 18**, Discipline, Hearings and Appeals provides in part:

"Section 1. Hearings

b) An employee may be held out of service pending hearing only if his retention in service could be detrimental to himself, another person, or the **Company**.

Section 2. Discipline

(b)(1) If the discipline is suspension, the period of suspension shall be deferred if within the succeeding six (6) month period following notice of discipline the accused employee does not **commit** another offense for which discipline is **subsequently** imposed."

Claimant has almost forty years of service and has been a Dispatcher for thirty four of those years. **There** is nothing in the record to suggest that his retention in service would be detrimental within the meaning of **Rule 18, Section 1(b)**. Inasmuch as the discipline assessed covered the **period** of time Claimant was suspended prior to the Hearing, it cannot be upheld.

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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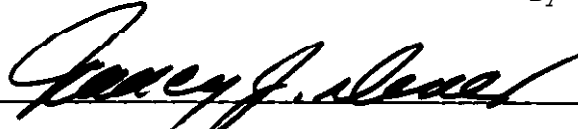
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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.