

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Southern Railway Company

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

(a) The Southern Railway Company (hereinafter referred to as the 'Company') violated Article 10 of the applicable schedule agreement when it suspended train dispatcher C. D. Chambless from the service of the Company without pay for 45 days, beginning August 21, 1984 and ending at midnight, October 4, 1984, such discipline being unsupported by the record in this case.

(b) The Company shall now clear Mr. Chambless of the charges, posting his record accordingly, restore him to his former position, and pay his net wage loss."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant has a seniority date of November 22, 1972. Since March 6, 1975, Claimant has held the position of Dispatcher. As a result of an incident on July 31, 1984, charges dated August 8, 1984, Investigation held August 13, 1984, and by letter dated August 20, 1984, Claimant was suspended from service for forty-five days for failure to handle an accident report in line with proper procedures.

On July 31, 1984, at approximately 11:40 p.m., Conductor J. B. Drake fell from a trestle and sustained an injury to his ribs. The following is a transcription from the voice recorder of the conversation between Drake and Claimant, who was on duty at the time of the injury:

"Drake: Okay. Get a hold of Mr. Bryson or Mr. Torbett to meet me at Fayette. I don't know whether I got any cracked ribs at Parrish, I don't know whether I got any cracked ribs or not. I fell off the trestle at American Tile.

Chambless: Let's see, you're chopped up real bad. Tell me again, over?

Drake: What about getting the chief to get a hold of Mr. Bryson or Mr. Torbett to meet me at Parrish. I fell off the trestle over there at American Tile. I don't know whether I got any cracked ribs or not.

Chambless: Okay. I got bits and pieces of that. I'm going to have to wait until you get a little closer there, I still didn't understand you, over. Chopped up real bad, over.

Drake: Chopping up, cab over.

Chambless: Yeah, I say you're chopped up real bad there. I did not get it that time, over.

Drake: Okay, what about getting the chief to get a hold of Mr. Torbett or Mr. Bryson to meet me at Parrish. I fell off the trestle over there at American Tile and I don't know whether I got any cracked ribs or not, over.

Chambless: Okay. I'll do that, over."  
[Emphasis added]

Notwithstanding his acknowledgment of the message from Drake, Claimant took no action in response to Drake's request to notify other Carrier officials of the injury. According to Claimant, due to the garbled nature of the transmission he actually was unaware of the injury to Drake. Claimant testified:

"A- ...Anyway, I did not understand what he said, I asked him to repeat it again, and of course he did, I still did not understand him. Knowing that he was going on the hours of service law the only thing I could figure out was he was questioning about the cab coming to get them and I assumed that that was what he was asking. I did not know anything about the accident report until Mr. Bice asked me about it. He told me Mr. Drake had been hurt. That was the first that I knew of it.

Q- Then,...there was a communication, you did not understand what was said and you assumed it had something to do with the hours of service law and the train orders, et cetera and then you just acted in relation to that.

A- Yes sir."

On August 1, 1984, Claimant prepared a written note concerning the difficulty he had with receiving the transmission. The Carrier did not learn of the injury to Drake until August 6, 1984, during a conversation between Trainmaster Torbett and Drake.

Aside from a reprimand dated May 1, 1982, Claimant's past disciplinary record demonstrates several suspensions of varying duration prior to this incident. Specifically, Claimant was assessed suspensions of ten, eight, eight and thirty days on April 17, 1977, May 1, 1981, October 8, 1981, and February 11, 1984, respectively.

Substantial evidence exists in the record to support the Carrier's determination that Claimant violated the cited Rules by failing to take action after being notified by Drake of the injury by virtue of the transcript of the conversation taken from the voice recorder. Rule N requires the prompt reporting of accidents to the proper authority. Rule GR-4 requires employees to follow instructions and perform all duties efficiently and safely. Rule 750 requires dispatchers to report to the Chief Dispatcher. Although Claimant states that he misunderstood the transmission from Drake and the record demonstrates that there were difficulties in early parts of the transmission, nevertheless, Claimant finally acknowledged that he understood the request made by Drake.

Under the review standard to which we are confined, Claimant's subsequent denials of knowledge of the injury cannot change the result. This record demonstrates that Claimant acknowledged that he understood the transmission concerning the injury. We find that admission sufficient in weight to meet the substantial evidence standard.

The fact that on the following day Claimant prepared a written note concerning the difficulty with the transmission on July 31, 1984, does not change the result. It is undisputed that Claimant had difficulty with receipt of the transmission. However, the fact still remains that Claimant ultimately acknowledged that he understood the transmission. For reasons stated above, that admission must be accorded deference. For the same reasons, the fact that Claimant may have had no motivation to let the incident go unreported since he did not cause the injury to Drake does not change the result. The fact remains that substantial evidence shows that Claimant was given the information concerning the injury and did not pass it on as was required. Similarly, the Organization's argument that the voice recorder may have had a clearer reception of the conversation, even if assumed as fact, cannot change the result under this review standard in light of Claimant's admission.

We note that Claimant testified that he made certain assumptions that the transmissions by Drake concerned the hours of service law and Drake's need of transportation. Giving Claimant the benefit of the doubt, if Claimant had to make such assumptions then further inquiry should have been made of Drake and such an admission is only indicative that Claimant was not adequately performing his duties.

With respect to the amount of discipline imposed, we are satisfied that the Carrier's action of imposing a forty-five day suspension was neither arbitrary, capricious or an abuse of discretion. Claimant's record demonstrates a series of suspensions of lesser degree along with a reprimand, the most recent suspension of thirty days being given less than six months prior to this incident. While such cannot be used to determine the validity of the charges against Claimant in this matter, those disciplinary actions can be used for determining the appropriateness of the amount of discipline imposed. Under the circumstances, we find that we are unable to disturb the assessed period of forty-five days as a suspension in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.