

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32003
Docket No. TD-32398
97-3-95-3-258**

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

**(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers**

PARTIES TO DISPUTE: (

(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Pursuant to Article 24 of the currently effective agreement between the respective parties, this letter appeals the discipline case of train dispatcher Walter L. Allen, who was dismissed from service by letter of carrier officer J. W. Duffy on January 24, 1994. . . .Therefore, Organization, believing the discipline assessed to be wholly inappropriate, capricious, arbitrary, exceedingly harsh, and entirely out of proportion to the offense, as well as not indicative of any reciprocal spirit of cooperation whatsoever, must now request that Mr. Allen be restored to service and compensated for time lost, with seniority and other benefits unimpaired."

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 employee 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.

On December 23, 1993, Claimant advised a track inspector that he had granted the inspector's request to make a hy-rail movement on Main Track No. 1 and that the track had been protected. However, Claimant placed a block on Main Track No. 2, instead of Main Track No. 1. Consequently, Train No. 17 lined into Main Track No. 1 and avoided colliding with the hy-rail vehicle only because both operators saw each other and were able to stop in time.

On December 27, 1993, Claimant was advised to report for a Investigation on December 31, 1993, into the incident. The Investigation was postponed twice and held on January 12, 1994. On January 24, 1994, Carrier advised Claimant that he was dismissed from service.

The Organization contends that Carrier violated the Agreement by failing to independently review the Organization's appeal of the discipline. Discipline was assessed by Carrier's General Superintendent of Operations at the Seattle Transportation Center. The appeal was addressed to Carrier's Vice President in Fort Worth, Texas. Carrier's response was given over the Vice President's signature, but written on letterhead from Carrier's Seattle Dispatch Center. The Organization contends that the General Superintendent, the same individual who imposed the discipline, ghost wrote the response to the appeal.

The Organization further contends that dismissal was an excessively harsh penalty. The Organization observes that Claimant's position was extremely stressful and that, at the time of the incident, Claimant was involved in Carrier's Employee Assistance Program. Although Claimant had been released medically to return to duty, the Organization observes, that Carrier's Manager of Employee Assistance Services and the Executive Director of the EAP program in which Claimant was participating submitted letters attesting to Claimant's not having fully recovered emotionally from his chemical dependency. The Executive Director suggested placing Claimant in a less stressful position for six months and then returning him to a dispatcher's position.

Carrier observes that Claimant admitted his responsibility for the incident in question. In Carrier's view, there is no evidence that the response to the first level appeal was ghost written and that, even if it had been, Claimant was not prejudiced because he had admitted guilt and because he received an independent review at the next level. Carrier also maintains that dismissal was appropriate given Claimant's prior

record, and that the Organization is seeking leniency which this Board has no power to grant.

We address the procedural issue first. There is no evidence that Carrier's response to the first level appeal was ghost written by the same Carrier official who assessed the discipline. There is only speculation based on the letterhead on which the response was written. In any event, there is no dispute that Claimant received an independent review from Carrier's Director of Labor Relations at the next level of appeal. Accordingly, we are not persuaded by the Organization's procedural arguments to disturb the discipline.

Turning to the merits, we observe that Claimant admitted his responsibility for the incident in question. The Organization does not contend that no discipline should have been imposed. Rather, the Organization attacks Claimant's dismissal as excessively harsh, particularly in light of Claimant's ongoing recovery from chemical dependency.

The incident in question was Claimant's third serious dispatch error in a little over four months. The Organization maintains that all three incidents are related. In the Organization's view, each resulted from Claimant's not having fully recovered emotionally from his chemical dependency, coupled with the enormous stress of a trick dispatcher's job. However, it is clear that Carrier did not force Claimant into a trick dispatcher's position. Claimant could have worked in an assistant chief dispatcher position which would have been less stressful. When asked why he did not work such a position, Claimant responded, "I just choose not to at this time," and, "I really like the trick work. I suppose that's the main reason that I never did go to ACD."

Claimant's contention was that the stress of the trick Train Dispatcher's position was incompatible with his emotional state, but he did not seek a less stressful position even after two serious incidents. When the third incident in such a short period of time occurred, it cannot be said that Carrier acted arbitrarily, capriciously, or excessively harshly, when it concluded that Claimant's continued employment posed too great a safety risk to tolerate further.

The Organization's argument that Claimant be restored to a less stressful position in light of his ongoing recovery from chemical dependency amounts to a request for leniency. Only the Carrier has authority to grant leniency. Regardless of whether this

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Board would grant leniency if it were in the Carrier's position, we have no authority to do so. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.