

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33471
Docket No. TD-33387
99-3-96-3-905**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

PARTIES TO DISPUTE: (

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“This is to appeal the decision of General Manager B. P. Sheeley to dismiss W. G. Aichorn for his failure to properly protect the Dispatchers extra board when called on March 15, 1996, at approximately 12:59 P.M., 1:00 P.M., and called on March 16, 1996, at approximately 5:09 A.M., 5:10 A.M. 5:24 A.M., for assignment D-109, at 7:00 A.M. start, which was to be filled on March 16 and 17, 1996; and D-108, 7:00 A.M. start, which was to be filled on March 16 and 17, 1996; and D-108, 7:00 A.M. start, on March 29, 1996, and to determine if any operating Rules, Safety Rules or Special Instructions were violated in connection therewith.

The Organization requests Claimant Aichorn be returned to service and compensated for all lost time less the requested 15 absent days.”

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.

Mr. W. G. Aichorn ("Claimant") entered employment with this Carrier as an Extra Board Clerk in 1973 and holds a seniority date of May 17, 1973 on the clerical roster. In 1974, pursuant to the September 29, 1939 Agreement between the TRRA and former Order of Railroad Telegraphers, Claimant went to work for the City of St. Louis as a Train Director at Gratiot Tower. That Agreement provided for continued maintenance and accumulation of his seniority while employed by the City of St. Louis. In 1989, Claimant returned to employment with Carrier as the result of the TRRA taking over the Gratiot Tower/MacArthur Bridge operation. Since his return to TRRA ranks in 1989, Claimant has incurred a steady stream of progressive discipline, primarily for unreliability in protecting his assignments on the Towerman's and Dispatcher's Extra Boards:

10/11/90 - Letter of warning for failure to protect the extra board.

11/09/90 - Letter of warning for failure to protect the extra board.

10/05/93 - 5-day suspension held in abeyance, five (5) hours' community service. Accepted responsibility for run thru switch WR Tower. (Signed waiver of appeal).

02/01/94 - Letter of warning for failure to protect extra board.

10/31/94 - Accepted thirty (30) days' suspension for refusal to protect assignment. (Signed waiver of appeal and accepted "last warning" with dismissal for any further failure to protect assignment).

7/06/95 - Dismissed for failure to protect the extra board. (Reinstated on leniency basis, effective November 6, 1995, by letter dated October 20, 1995.)

By letter of November 8, 1995 Carrier charged Claimant with failing again to protect an assignment, invoking the "last warning" letter of October 31, 1994, supra. According to unrebutted evidence presented on this record, at the postponed Hearing into that matter on December 5, 1995, an agreement was reached between Conducting Officer Sheeley and Claimant Aichorn, allowing Claimant 30 days in which to "get his

business in order and make himself available for work on January 5, 1996.” However, when he contacted the Crewboard, Claimant was advised his name had been removed from the Train Dispatcher Seniority Roster. It is unclear whether or to what extent that action had been impacted by the fact that on January 6, 1996, Claimant notified Carrier in writing: “I do not want to protect the clerks and tower extra board. According to the TCU agreement please let me know if you have work of thirty days or more.”

By letter of February 26, 1996, ATDD/BLE Vice President J. W. Parker reviewed the above convoluted scenario and requested that, “due to the existing circumstances,” TRRA Director Labor Relations & Personnel R. P. Mathewson “now reinstate Claimant Aichorn’s seniority with all rights.” As a consequence, Mr. Mathewson wrote to Claimant on March 13, 1996, as follows:

“Pursuant to the request of ATDA/BLE Vice President, Mr. J. W. Parker, as set forth in his letter of February 26, 1996, consider this as your authority to return to service, as your Train Dispatcher’s Seniority is restored strictly on a leniency basis, effective immediately, without pay for time lost.

This is to further advise that you are expected to be available for, and to protect, Dispatchers’ vacancies pursuant to the Agreement terms, and that failure to do so may result in disciplinary charges. You must contact the Crewboard and okay yourself for duty upon receipt of this letter.

Copy of this letter has been provided to the Superintendent’s Office, General Chairman Filges and Vice President Parker.”

Upon receiving that letter on March 15, 1996, Claimant sent the following response to Mr. Mathewson:

“Dear Bob:

Thank you very much. I received your letter of March 13, 1996 today. Keep up the good work.

It seems like you're the only friend I have in the TRRA management team. You have reinstated me twice. It seems like Jerry and Pat keep trying to keep me from working.

I have communicated with the crewboard and will back it up with a certified letter. Just in case they somehow lose their letter here is a copy of it that I'd appreciate you keeping.

Thanks again."

Enclosed with that letter was a memorandum dated March 15, 1996, from Claimant addressed to the "TRRA Crewboard Officer," reading as follows:

"I received a letter from R. P. Mathewson today reinstating my Train Dispatchers seniority and ordering me to contact you.

As you know, I made myself available to work on January 5, 1996. I was surprised when my Dispatchers' seniority was revoked between the time I marked up and 1 o'clock that day.

This time I am rearranging my life once again to comply with my reinstatement. It should only take 5 to 15 working days. I'll contact you as soon as I get my affairs in order. If you have any questions please feel free to contact me. Registered mail would be best."

By letter of March 22, 1996, Trainmaster Coffman notified Claimant as follows:

"An investigation will be held in the Conference Room, E. F. Murry Operation Building, N.E.E.B., Venice, Illinois, at 9:00 A.M., Tuesday, March 26, 1996, to develop the facts, discover the cause and determine your responsibility, if any, in connection with your alleged failure to properly protect the Dispatchers extra board when called on March 15, 1996, at approximately 12:59 P.M., 1:00 P.M., and called on March 16, 1996, at approximately 5:09 A.M., 5:10 A.M., 5:24 A.M., for assignment D-109, 7:00 A.M. start, which was to be filled on March 16 and 17, 1996; and D108, 7:00 A.M. start, on March 20, 1996, when you were called at approximately 11:35 A.M. and 11:40 A.M., March 19, 1996; and to

determine if any Operating Rules, Safety Rules or Special Instructions were violated in connection therewith.”

Following that Hearing, General Manager Sheeley notified Claimant by letter of April 1, 1996 that the charges were found proven and his name was “being removed from the Dispatcher’s seniority Roster, effective immediately.” General Chairman Filges appealed that decision by letter of April 20, 1996, requesting that Claimant “be returned to service and compensated for all time lost over the requested 15 days as requested.” The stated grounds for that appeal were as follows:

“We feel the decision to dismiss Mr. Aichorn, from the service of the Terminal Railroad Association of St. Louis, is much too severe a punishment to say the least, in regard to his number of years as a employee with the Company. Therefore, the discipline imposed as a result of his failure to comply with written instructions far exceeds the bounds of reasonableness.

Any discipline assessed must be commensurate with the employee’s length of service, the nature of the offense, and any previous discipline assessed the employee.”

After reviewing the twists and turns of the convoluted maze which resulted in the revocation of Claimant’s Dispatcher seniority on April 1, 1996 we are left with the conclusion that he bears a substantial share of the blame for the situation in which he finds himself. But for his repeatedly demonstrated unreliability in failing to protect his extra board position he would not have been on the slippery slope of progressive discipline leading to loss of seniority. Despite the extensive efforts of ATDD/BLE to secure leniency reinstatements for him in January 1996 and again in March 1996 he still is not restored to service. To some degree that appears to be a result of inadequate communication between and among Carrier Managers but in no small part it is also due to brinkmanship and grandstanding by Claimant, as evidenced by his intemperate letters to Carrier on January 6 and March 15, 1996.

Based upon all of the mitigating circumstances of this peculiar case, we shall direct Carrier to offer Claimant restoration of his Dispatcher’s seniority, without back-pay, conditioned upon his passing necessary physical examinations and marking up for service within 30 days’ of such offer. If he makes timely acceptance and returns to

employment, his continued employment is further subject to the conditions set forth in the Letter Agreement which he signed on October 31, 1994. Failure of Claimant to timely accept Carrier's conditional reinstatement of his seniority at the direction of this Board will be deemed a voluntary resignation of his employment retroactive to April 1, 1996.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of September 1999.