

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway, (a) that Telegrapher R. A. Jones be reimbursed in the amount of \$8.89, representing \$5.84 wages lost and \$3.05 expenses incurred while away from his assigned position on instructions of the proper officer to testify in an investigation being conducted by the carrier in an attempt to place the responsibility for a derailment; and (b) that the thirty demerits assessed against Mr. Jones' personal record in connection with said derailment be removed."

OPINION OF BOARD: The principal question in this case is whether telegrapher Jones was guilty of violation of Rule No. 564, which provides:

"When their duties permit they will observe passing trains and if anything is seen which might endanger the same, the train should be stopped and the incident reported to trainmaster."

It is claimed that Mr. Jones saw sparks coming from the wheel of one of the freight cars as it passed him, and should have signaled for the stopping of the train; that his failure to do this resulted in the derailment; and that the assessment of demerits against him for failure to perform his duty was proper.

We do not agree with the foregoing contentions. Mr. Jones stated that, when he turned around, after picking the hoop off the platform, he saw a few sparks coming from the wheel of a car which, in his opinion, was 12 or 14 cars from the engine. It is not at all certain that the accident resulted from the overheating of the wheel on the car in question. There was considerable difficulty before the train arrived at the station where Jones was on duty, apparently growing out of failure of the air brakes to function properly in different portions of the train. One of the witnesses who was a member of the crew on the train testified that he bled the air at a certain car, which seemed to remedy the difficulty there.

It appears that a few sparks could come from a wheel because of various reasons. The application of the brakes, although released in proper fashion, thereafter, might send a few sparks from a wheel. It also appears that sand, especially at the time of application of brakes, could send out a few sparks. Such momentary, non-continued manifestation of friction does not appear to evidence a danger.

The circumstances of the disclosure by Mr. Jones of what he saw, indicates his honesty and his belief that he had acted in a reasonable way in

not concluding that these few sparks indicated danger. Apparently no one else saw the sparks, and Mr. Jones, if he had been derelict in duty and had wanted to conceal the fact, did not have to reveal the incident.

No general rule can be relied upon in deciding this case. It may have been that the accident was caused by this particular wheel; and from everything that appears in the case, the accident could have resulted from improper functioning of brakes on one of the other cars. If it is a common occurrence to see sparks fly from a wheel or brakes, when no danger exists, or is to be anticipated, it is impossible to say that Mr. Jones, in seeing a few sparks, saw anything that, in the opinion of a reasonable man in his position, might endanger the train. There is no substantial evidence that when a spark flies from a wheel, or that when a few sparks fly from a wheel, it is ground for belief that the train is thereby endangered. On the facts of this case, we are of the opinion that the evidence presented did not show that Mr. Jones was derelict in duty in acting, or failing to act, in violation of rules. Proof is lacking that a few sparks from a wheel, in the opinion of railroad men of experience, is a circumstance which can be said to endanger a train. The 30 demerits assessed against Mr. Jones' personal record in connection with the said derailment, should be removed.

With regard to the claim made for attending the investigation, we are of the opinion that Mr. Jones is entitled to reimbursement for expenses. The investigation was for the purpose of determining responsibility for the accident. Under Article 16 of the Telegraphers' Agreement, claimant is entitled to such compensation and expenses, where he is taken from his assigned duties to appear as a witness for the company. In this instance, he must be considered as a witness for the company—that is, for the purposes of the company. The rule provides for reimbursement if he is taken away from his duties to attend court or to appear as a witness for the company. Fairness, in addition to a reasonable interpretation, justifies such a construction.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 claimant was guilty of no violation of rules.

AWARD

Claim sustained and the 30 demerits ordered removed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.

DISSENT TO AWARD 1445, DOCKET TE-1494

The opinion in this award, in its review of the basic facts which resulted in discipline in this case, is contrary to the weight of evidence of record, and the substitution of the judgment of the Board represented by such opinion for that of responsible officers in the technical and practical phases

of operations involved in this case in the absence of any evidence of bias, prejudice, or improper hearing is an unwarranted assumption of authority condemned by general public acceptance of orderly conduct of business including discipline, as well as by many sound practical decisions by this Division.

The translation of the status of this one attendant at an investigation from that of an employe involved in an accident inquiry to that of a "witness for the company" is contrary to the meaning and purpose of the contract rule (Article 16) on which it relies, and has neither precedent nor sound purpose of contract construction to support it.

(S) A. H. Jones
(S) C. P. Dugan
(S) R. F. Ray
(S) C. C. Cook
(S) R. H. Allison