

Award No. 1823
Docket No. TD-1801

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
NEW YORK CENTRAL RAILROAD COMPANY
(LINES WEST)

STATEMENT OF CLAIM: As the duly authorized representing agency and in behalf of J. S. Shea, the American Train Dispatchers Association claims that due to circumstances involved, the dismissal by the carrier of J. S. Shea from his position of train dispatcher in the Toledo, Ohio, office was unjustified and improper and that he be reinstated to that position with seniority unimpaired, his service record cleared of the charge or charges used by the carrier as a basis for his dismissal and that he be paid the amount the carrier would have paid him had he not been removed from service beginning May 22, 1941.

JOINT STATEMENT OF FACTS: On May 22nd, 1941, a collision occurred between MC RR passenger train No. 303 and NYC RR yard engine 7297 on the Detroit Division within the Toledo Terminal District at a point approximately 4300 feet north of "Z" Tower, located at the junction of the Detroit Division and the Toledo Division Old Road line. At the time of this occurrence, due to track changes under the Broadway Bridge, all passenger and freight trains and all light engine and yard movements in both directions were being handled under Broadway Bridge over a single lead at the west end of Toledo Passenger Yard for a distance of about 1400 feet; switches at each end of the cut-over section were handled by switchtenders and all movements made on hand signals from them under the supervision and direction of a trainmaster.

In this situation, while westward movements were being made, eastward freight train NY-4 was being held in the yards at Swan Creek and south or eastward freight train BT-3 was being held on the main track at Swan Creek, the rear end of this latter train fouling "Z" Tower, so that the crossover from the south to the northward track was blocked.

Yard engine 7297 was occupying Detroit Division northward main track No. 2 at the A&P Plant between "Z" Tower and Wagon Works.

J. S. Shea was on duty as yard dispatcher in charge of train movements through the territory involved. Operating conditions, caused by rear end of train BT-3 fouling the crossover at "Z" Tower, made it necessary for him to issue a "Yard order" authorizing passenger train No. 303 to run south over the northward track between Wagon Works and "Z" Tower. The operator at Wagon Works delivered the "yard order," also Clearance Form "A" which stated that the "block" between these two points was clear of all opposing trains, to train No. 303. As a result, train No. 303 collided with yard engine No. 7297.

movements when he issued and completed an order permitting and authorizing a passenger train to make a reverse movement in the face of a superior train (yard engine 7297), which he had previously authorized to use the track on which the reverse movement was being made.

This case is not one simply concerning the employe and the carrier. The interest of the traveling public must be considered. It is the duty of the carrier to take such measures to prevent negligent action by employes as will ensure safety to the traveling public as well as other employes. The accident resulted in injuries to 29 individuals of whom 21 were passengers; also extensive damage to equipment.

The carrier desires to cite award 1497 of the Third Division, wherein Referee Thaxter states:

"It is not the function of this Board to review the judgment of the management in the case of discipline. We can set aside the action taken only where it is so clearly wrong that we can say there has been an abuse of discretion."

Attention is also drawn to awards 71, 232, 280, 891 and 1310 of the Third Division. The carrier's position is that under the circumstances the discipline administered was entirely justified and the claims of the committee are without merit and should be denied.

OPINION OF BOARD: This claim presents a dispute between the American Train Dispatchers Association and the New York Central Railroad Company on the question of whether or not on the facts presented this carrier was justified in dismissing from the service J. S. Shea, a dispatcher, who had been in the service for a long period of years. The severity of the discipline is not before us but only the right to administer it.

The occurrence which gave rise to the dismissal of Shea was the collision of two trains in the Terminal District of the carrier at Toledo, Ohio, on May 22, 1941, the responsibility for which Shea was in whole or in part charged.

Shea was on duty at the time as yard dispatcher in charge of train movements through the territory involved. The main line is double tracked through this territory. The current of south-bound traffic in regular operation is on the west track and the north bound on the east.

The area with which we are more particularly concerned is that between Z Tower and Wagon Works. Z Tower is along the track two miles west of Toledo. Wagon Works is 2.3 miles to the north of Z Tower. The tracks from Z Tower follow a curve first to the northwest, thence northeast, and then on a straight line northeast to Wagon Works. The point of the accident was about 0.8 miles from Z Tower. There is a side-track to the Great Atlantic and Pacific Tea Company plant located about 3/4 of the distance from Z Tower to the point of the accident. There was a cross-over at Z Tower.

Prior to the accident the cross-over at Z Tower was blocked, therefore, it became necessary for Shea to issue "yard order" authorizing the south-bound passenger train involved in the accident, train No. 303, to cross over and use the regular northbound track from Wagon Works to Z Tower. He did issue the order as complete at 12:40 P. M. on Yard Order Form at that time used by the carrier at this point on its system. The operator at Wagon Works delivered the yard order and clearance to train No. 303 which stated that the "block" between Wagon Works and Z Tower was clear of all opposing trains. The block was not clear of opposing trains. Yard engine No. 7297 was in the block. Train No. 303 entered the block and in consequence a head-end collision of the two trains resulted.

The superintendent held an ex parte investigation to determine the cause of the accident following which on June 4, 1941, he sent Shea a letter of dismissal. The letter contained the following:

"Investigation developed that you issued yard order No. 3 and completed it to No. 303 at Wagon Works, giving that train right over opposing trains on Track No. 2, Wagon Works to Z, knowing that engine 7297 was in the block and that Dorr Street yard engine was in the vicinity, without having made any effort to contact the crews of these engines, in violation of the forepart of Rule on Page 72 of the Book of Rules, which prohibits a train being moved against the current of traffic until the track on which it is to run has been cleared of opposing trains, as well as violating the last paragraph of Rule 208a which prohibits an order being completed for the movement of a passenger train against the current of traffic until the superior rights of the yard engines 7297 and 7716 has been restricted.

"For violation of the above mentioned rules you are hereby dismissed from the service effective June 6th."

The claimants assert that the contention of the carrier that rules were violated by Shea is without foundation that Shea had no responsibility for the accident, and that in any event the rules pertaining to hearing with reference to discipline of employees have been violated.

The portion of the rule on Page 72 that the carrier charges was violated is the following:

"A train must not be moved against the current of traffic until the track on which it is run has been cleared of opposing trains, * * *."

The last sentence of Rule 208a, erroneously referred to in the letter of dismissal as "last paragraph," is the following:

"When the movement of a passenger train is affected, the order to the inferior train must not be made 'complete' until the superior train has been brought to a stop and a copy of the order delivered to the conductor or engineman."

In the movements of these two trains it cannot be denied that the quoted portion of rule, Page 72 was violated. Engine 7297 was moving with the current of traffic. Train 303 was moved against the current of traffic. The track was not cleared of 7297 before train 303 was run against the current over the track in question.

Likewise it cannot be denied that the last sentence of Rule 208a was violated. Engine 7297 was the superior train and Train 303 was the inferior. The order was made "complete," on the basis of which 303 was cleared onto the track against 7297, but no copy of the order was ever delivered to the conductor or engineman of 7297.

The claimant asserts that Shea was not at fault in either of these connections. This must be answered on the basis of the actual knowledge which Shea had of events and conditions, and the responsibility for knowledge or lack of knowledge imposed by the duties of the positions held by him and the rules.

On his statement to this division, he knew that 7297 had been allowed to go onto this track. Likewise on his statement he did not know that 7297 had left the track at the time he completed the order which permitted 303 to enter thereon against the current of traffic. In the Joint Statement of Facts on which this claim is predicated appears the following:

"J. S. Shea was on duty as yard dispatcher in charge of train movements through the territory involved. ****."

He was, of course, charged with the knowledge of conditions created by him or created with his knowledge or consent and with appropriate responsibility attendant upon the conditions thus created. It, therefore, became his

duty, having known that 7297 had gone upon the track, to ascertain whether or not it had withdrawn before completing an order which would permit 303 to enter thereon. The responsibility for the consequences of his failure to do so were his.

The point is urged that yard order form used at the Toledo Yards and the signalling devices and practices used caused or contributed to the happening of the accident here, but we cannot observe any merit in the contention. It may be that these things impeded efficient operation of trains and served as a temptation for dispatchers to cut corners to speed up traffic, but could not serve as a reason for taking chances upon death, injury and the destruction of property.

Coming now to the matter of the propriety of the hearing, it is clearly apparent that there was no hearing in accordance with Article VI, Dispatchers' Agreement. The article permits prompt suspension by the carrier pending a hearing, but it does not contemplate other disciplinary action without hearing.

This failure to allow hearing we do not hold to be unimportant, but in view of the fact that both parties have presented the case fully on the merits, and this division is fully informed on the facts, and in view of the further fact that only delay would be accomplished by deciding the case on technical grounds we conclude that it should be decided upon the causal issues.

In this light the claim should be denied.

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 in this light the claim should be denied.

●
AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.