

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

READING COMPANY

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

Train Dispatcher James F. Ayres be paid for three days' suspension from service on June 11th, 12th, and 13, 1941, at train dispatcher's rate of pay, a total of \$31.05 and that his record be cleared of the charge of being responsible for an accident that occurred at West Falls, Pa., on March 20, 1941.

EMPLOYEES' STATEMENT OF FACTS: James F. Ayres was regularly assigned as towerman at "FS" Tower, West Falls, Pa., for some years and until April 1, 1941, when he was assigned as a Train Dispatcher in Philadelphia office. Mr. Ayres was on duty at "FS" Tower on March 20, 1941, when a derailment occurred in front of his office for which he was held responsible.

Extra 1692, moving North to West Falls yard, with 51 cars, stopped in front of the Tower at 7:08 P. M. and moved again at 7:13 P. M., at which time the rear trucks of the 48th car and the three following cars were derailed at a point directly over the derail and were dragged clear of the derail before the train was again brought to a stop.

The mechanics of the interlocking plant will not permit the derail to be moved unless it had previously been set for running movement without being locked and without displaying a proceed signal. A proceed signal cannot be given to an approaching train unless the derail is in the proper position and locked.

The route is protected by a time release device.

Testimony taken at the investigation indicates that the signal was showing a green or proceed indication when extra 1692 passed it.

Extra 1692, with 51 cars was moving Northward from a siding some distance South of FS Tower to West Falls Yard, a point North of the Tower. The governing signal for this route is located South of the Tower and South of a main track derail, which is of the Wharton type, with a riser rail, and is located in the vicinity of and in front of the Tower. The route extra 1692 was using crosses a main track to the yard tracks beyond, to which the extra was bound. The normal position of the derail is for derailling. When trains use this route it is necessary for the Towerman to set the derail for the running position, lock it, and then set the signal in proceed indication. Once this has been done the set up is protected by a time lock device that does not permit the route to be changed except after a lapse of

Under the circumstances and evidence presented in the foregoing, it is the Carrier's position that it was impossible for this accident to have occurred if Mr. Ayres had properly performed his duties as a towerman; therefore it cannot be found that Ayres was "blameless" within the meaning of Rule 10 of the Telegraphers' Agreement.

This is a so-called "discipline case," wherein the American Train Dispatchers' Association is requesting the Third Division of the National Railroad Adjustment Board to set aside the considered judgment of the officers of the Carrier, who are responsible for the safe operation of its system and the safety of its employes, and who passed on the evidence in this case and approved the discipline, and substitute therefor the judgment of the American Train Dispatchers' Association who are in no way charged with such responsibility.

In this case it cannot be shown that the Carrier acted in bad faith, arbitrarily or without just cause, therefore the Board should not question the propriety of the discipline assessed and to sustain this claim would constitute an unwarranted encroachment on the power of the Carrier to assess discipline.

Carrier requests that the claim be denied in its entirety.

OPINION OF BOARD: This is a discipline case. The rule in such a case is stated in Award No. 892 as follows: "Although this Board has power to review cases involving discipline, it should be very cautious in the exercise of this power. It should not disturb the action of the management unless the evidence clearly indicates that the management has acted arbitrarily, without sufficient evidence or just cause, or in bad faith. The Board does not have the power to disturb the action of the Management in such cases merely because it thinks the discipline meted out is not what it would have meted out, had it been in the position of Carrier." See, also, Awards No. 71, 135, 232, 271, 280, 373, 418, 419, 891, 954, 1022, 1297, 1497, and 1755.

The record as a whole shows that the Carrier did not act arbitrarily or in bad faith. The Board, also, thinks that the evidence is sufficient to show that the derailing was caused by the neglect of the Claimant. The evidence shows that the interlocking plant was properly working shortly after the derailment. From the evidence, it could be found that the line-up was not completed, and the derail remained unlocked. If the derail had been locked, the derailment could not have happened, and the last four cars could not have been derailed. The Claimant was the only person in the Tower at that time. While this Board may have come to a different conclusion, it does hold that the evidence is sufficient to sustain the Carrier's findings.

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 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 18th day of January, 1943.