

Award No. 6171

Docket No. TD-6078

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE VIRGINIAN RAILWAY COMPANY

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

1. The Virginian Railway Company, on or about February 21, 1951, made an entry of thirty (30) demerits on the record of Train Dispatcher A. R. Perry, which entry was made—

- (a) in violation of the Agreement between said Railway Company and its train dispatchers, and,
- (b) was unjust, arbitrary and in abuse of the Carrier's discretion.

2. The Virginian Railway Company shall be required to remove the entry referred to in Paragraph 1 hereof from the record of Train Dispatcher A. R. Perry.

OPINION OF BOARD: The American Train Dispatchers Association seeks to have removed from the record of Train Dispatcher A. R. Perry an entry of "thirty demerits" which the Carrier has caused to be entered against it.

As of February 10, 1951 Carrier served Perry with a notice dated February 9, 1951 as follows:

"You are hereby charged as follows: With responsibility in connection with Extra 711 East being routed through passing siding at West switch Harper, W. Va. on the morning of February 1, 1951, when provision had been made for occupancy of this passing siding by Extra 716 West."

A hearing was had on February 14, 1951 and by letter dated February 21, 1951 Perry was notified that his record was being charged with "thirty demerits" for his responsibility in connection with Extra 711 East being routed through passing siding at West switch Harper, W. Va. on the morning of February 1, 1951, when provision had been made for occupancy of this passing siding by Extra 716 West.

The Organization's first contention is that the notice given Perry did not meet the requirements of Article 8(b) of the parties' Agreement. This rule, as far as it is material to the contention, provides:

"* * * Such notice shall be in writing and shall clearly specify the charge, or nature of the complaint. * * *"

The purpose of this requirement is to give every employe, when accused by the Carrier of some offense, definite information as to the nature thereof so he may prepare and present any defense he may have thereto.

Perry knew Extra 711 East was a manifest time freight which should be given preference and not unnecessarily delayed. He also knew there was no operating need for putting it into the passing track at Harper and thereby cause it to be delayed. A Train Dispatcher is charged with the safe and efficient operation of train movements within the territory under his jurisdiction. When Carrier notified Perry he was being charged with responsibility in connection with Extra 711 East being routed through the passing siding at the West switch at Harper he knew full well the nature of the complaint that was being made against him.

The complaint, as made, contained no specific references to any rule, instruction or practice, either written or oral, as having been violated. This fact is not necessarily controlling for all the responsibilities of an employe do not necessarily arise therefrom. They can and do arise out of the performance of the duties of the position to which they are assigned which duties, in so far as Perry was concerned, we have already referred to.

It is also contended that the Engineer, Fireman and Brakeman of Extra 711 East were all charged in the same language as Perry when, as a matter of fact, they could not have had the same responsibilities in connection with the incident involved. Whether or not Carrier served these men with a like notice is not material to this dispute, which does not involve them. If the notice given Perry complied with the requirement of the rules of the Agreement which covers him, which we find it did, that is all that can be determined here.

It is also contended that the action of the Carrier in entering "thirty demerits" on the record of Claimant, in view of the record, is unjust, arbitrary and an abuse of discretion.

Causing Extra 711 East to go into the siding at Harper and be delayed, when there was actually no operating need for doing so, was certainly poor and inefficient dispatching for which Perry could be held responsible if he was the cause of it. As already stated, Perry was charged with the safe and efficient operation of all train movements within the territory under his jurisdiction. His territory included the 60.3 miles of Carrier's single main line track from Mullen west to DB Tower. This main line was controlled by a CTC system. It included the siding at Harper. The Dispatcher's office is at Mullen and it was there Perry worked. Under this CTC system the signals and switches to the passing track at Harper are under the complete control of the Train Dispatcher at Mullen, who, at the time, was Perry.

Perry testified he was reasonably sure he did not set up the route for Extra 711 East to take the siding at Harper, that he couldn't say if the control board indicated the switch was lined for a siding move, and that he did not have any knowledge of lining the west switch for Extra 711 East to taking the passing track at Harper. His testimony as to just what he did is not very satisfactory.

However, the record establishes that as Extra 711 East approached Harper about 9:00 A. M. on February 1, 1951 the signals for the west switch, and the west end switch to the siding, were both set for a siding movement; that Extra 711 East did go onto the siding at Harper; and that very shortly

after it had entered the siding the signals and switch were returned to position for a main line operation.

Claimant seeks to avoid his responsibility for misrouting Extra 711 East by suggesting the possibility of a mechanical failure. That mechanical failures can happen is always a possibility. Here the signals and switch are controlled by a lever and button, the latter, when pressed, actuating a coded electrical current, the code responding depending upon where the lever is set. Further, when Signal Maintainer Pritchard examined the signals and switch just a few minutes after the incident, doing so in conjunction with Perry, he found them in perfect working order. Not only that, but based on Pritchard's testimony, there would have had to have been a double failure; first, when the signals and switch were lined for a siding movement, and second, when the train had entered the siding and the switch and signals returned to position for a mainline movement. Such a possibility is certainly not within the realm of probability. It is too far removed from reality that it can be considered as a proper basis for relieving Claimant of his responsibility in connection with what actually happened.

We find the record fully established that Perry caused Extra 711 East to take the siding at Harper by lining the signals and switch for a siding movement. Such being true, the penalty imposed is not unjust, arbitrary or an abuse of discretion.

One additional factor was originally raised but not subsequently stressed, that is, the introduction of Claimant's record for consideration in the disposition of his case. An employee's record cannot properly be received and considered in determining his guilt but can properly be received and considered in determining the extent of the penalty that should be imposed upon him if and when it has been determined he is guilty of the charges which have been made against him. It is apparent that it was so considered by the Carrier.

In view of the foregoing we find the claim made to be without merit.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.