

Award No. 6641
Docket No. TD-6598

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(a) The New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the Carrier, violated the currently effective Agreement with the claimant organization, including Article 8-(b), by its action in suspending Assistant Chief Train Dispatcher R. R. Sheak from his assigned position as assistant chief train dispatcher for a period of ten (10) days beginning on or about September 4, 1952, upon a charge unsustained by the record of hearing held on August 22, 1952, which action was unjust, unreasonable, arbitrary and in abuse of the Carrier's discretion.

(b) The Carrier shall now pay Assistant Chief Train Dispatcher R. R. Sheak for all time lost during the time he was suspended from service beginning on or about September 4, 1952, as a result of said Carrier's unwarranted and unsustained action and that in accordance with Article 8-(e), his record be cleared of any charges incident thereto.

OPINION OF BOARD: This is a discipline case. Claim is made by American Train Dispatchers Association on behalf of an Assistant Chief Train Dispatcher for pay for all time lost account of his suspension for ten days because of his alleged part in putting a dead engine with rods down into a train without notifying any one that the train was to move under a restricted speed. Because of negligence of someone damage resulted to Carrier's rails, roadbed and other property, in a total amount of \$215,000. The Engineer and Conductor were dismissed from service and the Fireman and one of the Brakemen received deferred suspensions.

The Dispatcher concerned stated at the conclusion of the hearing that he had a fair trial and had no exceptions to make "except protest by Mr. Coutts." Mr. Coutts was his representative.

Mr. Coutts' protest was—"As general protest, which is to apply to all train dispatchers on charges, and for Mr. Parrett and myself. We have objection to enter which has to do with the notice requiring Chief Train Dispatchers and train dispatchers to appear at this hearing, such objection is for and on behalf of each of them on the ground that such notice is not precise in the charges contemplated by Article 8 of the existing agreement

between the Railroad Company and the American Train Dispatchers Association in that it does not specify the rule or rules, instruction or instructions which are alleged to have been violated by them, or any of them and thus enable them to prepare any defense which might be necessary. Proceeding(s) are objected to further on the ground that those who may have previously made statements concerning the subject matter are not present to be cross-examined."

The charge was—"* * * to develop your responsibility for placing of Eng. 759 in train No. 32, Eng. 755, departing East Wayne Yard, August 4, 1952, and the handling and instructions given Conductor and Engineer of train No. 32, Eng. 755 August 4, 1952."

Under date of September 4, 1952 Claimant was notified he would be assessed discipline of ten days' actual suspension "* * * for your responsibility for the placing of Engine 759 in train No. 32, Engine 755, departing East Wayne Yard, August 4, 1952."

We do not think there was lack of specificity in the charge, because immediately after the damage everyone connected with the incident knew what had happened, and certainly no one knew better than this Assistant Chief Train Dispatcher what he was charged with and he was present at the investigation of the train crew, where every detail of the cause of damage was explored.

It must be conceded, however, that there was a slight departure from the original charge, to that which the Carrier now asserts was the cause of the discipline, but we feel that such departure was not prejudicial.

The propriety of the discipline gets down to the question of who was telling the truth. If Sheak's story is true, he was without blame, but the Roundhouse Foreman, whose business it was to actually put Engine 759 into the train, said that he told Sheak that "Engine, stripped and dead and ready to go" which would require restricted speed, because "stripped" to any railroad man means with side or main rods down.

Sheak's time table contained this rule:

"Speed restrictions. Engines with side or main rods down or disconnected, Freight trains 20 miles per hour."

Train No. 32 moved out of the East Wayne Yard with no restrictions on speed, and on the trip was running as high as 50 miles an hour, which resulted in the damage to the property.

Mr. Sheak had an excellent record, and we can fully appreciate his concern about this discipline, but a very careful study of the record convinces us that he was not completely free from blame for the serious damage done in this case, and the suspension of 10 days was not unfair. See Award 6171.

Consequently this claim will have to be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 did not violate the Agreement.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 25th day of May, 1954.