Award No. 7283
Docket No. TD-7269

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" violated Regulations 6 and 7 of its existing Agreement with claimant organization when it disqualified and removed Movement Director G. B. Andeway from his assigned position as Movement Director on April 16, 1953, upon charges unsupported by the record of the hearing held on April 16, 1953, which action was unjust, unreasonable, arbitrary and in abuse of the Carrier's discretion.

(b) Movement Director G. B. Andeway be restored to the position of Movement Director and compensated for his net loss in compensation resulting from Carrier's unwarranted and unsupported action.

OPINION OF BOARD: The claimant in this case had been in the Carrier's service for forty-three years, the last twenty-eight of which had been in the position of Movement Director in the Carrier's Movement Director's Office in Chicago. Under date of April 13, 1953, he received a letter directing him to appear in the Trainmaster's office on April 16 for a hearing in connection with certain specified failures in the performance of his duties, and referring to the fact that he had previously been called to the office and advised of his unsatisfactory service.

On the 16th, in the Trainmaster's office, the Trainmaster conducted a hearing in the presence of the claimant, his representative, the Supervisor of Personnel and a stenotypist who made a verbatim record of the proceedings. The entire hearing, (the transcript of which takes up just over two pages), consisted of a recital by the Trainmaster and a reply by claimant. The Trainmaster described a number of specific failures by claimant, including those adverted to in his letter of the 13th as well as others, and also made the following statements: "Mr. Andeway, recently, we have had many instances in connection with your work, which indicates (sic) that you are not alert to the point where you can handle serious accidents and take the necessary action to handle these conditions." . . . "Your conversations on the telephone are entirely too long and too rambling; you discuss matters on other divisions and fail to follow conditions on this division." . . . "For some time there has been a question as to your ability to comprehend conditions quickly and take action for the safety of the operation of the railroad." . . . "In con-

sideration of your length of service, both as an employe and as a Movement Director, we think that something has occurred which prevents you from keeping abreast of conditions as they occur, which is not desirable in a Movement Director." Claimant briefly answered certain of the specific instances referred to by the Trainmaster, defending his actions in connection with them.

After the hearing, claimant was advised that he was disqualified as Movement Director; he thereupon exercised his seniority to obtain a position of Assistant Movement Director. On April 21, claimant filed a written appeal with the Superintendent setting forth in detail his position on the various matters raised by the Trainmaster at the hearing. He was granted a hearing on this appeal on May 8, and following this hearing the Superintendent denied his appeal. On July 27, a request for reinstatement was filed with the General Manager; after a meeting on the matter in his office on December 14, 1953, he denied the request under date of April 8, 1954.

The claim before the Board requests that Mr. Andeway be restored to his position of Movement Director and be compensated for his net loss in compensation. The claim rests on the proposition that Carrier violated the Agreement by failing to accord to claimant the procedure set forth in Regulation 6. The Carrier concedes that it did not follow the procedure set forth in Regulation 6, so there is no necessity for the Board to make a finding in that regard. However, the Carrier contends that Regulation 6 is not applicable to the disqualification of an employe for inability to perform the duties of his position, and therefore its failure to follow the procedure therein set forth in its handling of claimant was not a violation of the Agreement.

The rule in question follows:

"Regulation No. 6—Discipline

6-A-1. (a) Movement Directors shall not be suspended nor dismissed from service without a fair and impartial trial.

(b) When a major offense has been committed a Movement Director suspected by the Management to be guilty thereof may be held out of service pending trial and decision.

6-B-1. A Movement Director who is required to make a statement prior to the trial in connection with any matter which may eventuate in the application of discipline to any employe, if he desires to be represented, may be accompanied by the duly accredited representative, as that term is defined in Part II of this Agreement. A copy of his statement, if reduced to writing and signed by him, shall be furnished him by the Management upon his request.

6-C-1. (a) A Movement Director who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact offense for which he is to be tried and the time and place of the trial.

(b) If he desires to be represented at such trial, he may be accompanied by the duly accredited representative as that term is defined in Part II of this Agreement. The accused Movement Director or his representative shall be permitted to question witnesses insofar as the interests of the accused Movement Director are concerned. The Movement Director shall make his own arrangements for the presence of the said representative and of any witnesses appearing on his behalf, and no expense incident thereto will be borne by the Company.

6-C-2. (a) If discipline is to be imposed following trial and decision, the Movement Director to be disciplined will be given written notice thereof at least ten days prior to the date on which the discipline is to become effective, except that in cases involving dis-

missal such dismissal may be made effective at any time after decision without advance notice.

(b) If the discipline to be applied is suspension, the time the Movement Director is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension."

The question is whether it was intended by the "Discipline" rule to cover the situation where an employe is disqualified from a position because he has lost the ability to perform the duties required by that position. Claimant argues that he was demoted and that demotion is a form of discipline; that the rule is applicable in any situation when an employe is removed from a position in which he has acquired seniority rights under the Agreement. Carrier argues that the rule is limited to situations where an employe is "disciplined", and that disqualification and removal from a position because of general lack of ability to perform its duties, rather than as punishment for some specific offense or failure, is not "discipline".

There is no evidence in the record to shed light on the original intention of the parties to the Agreement; nor is there any evidence of an interpretation of the rule by the parties through past conduct in similar situations. Resort must be had to the general understanding of the meaning of the language used, and to previous awards of this Division. Both of these sources support the Carrier's position. "Discipline", in the sense it is used here, is defined by Webster as "punishment for the sake of training; correction; chastisement; . . ." The verb form is defined as "to punish or chastise". "Punishment" is defined as "any pain or detriment suffered as a consequence of wrongdoing". It appears from the language of Regulation 6 that the parties understood and used the word in this normal sense. Thus, Section 6-A-1(b) speaks of being "guilty" of a "major offense"; Section 6-C-1(a) speaks of a "Movement Director who is accused of an offense" and of his being "tried". Reading the rule in the light of the generally understood meaning of "discipline", it seems to have been intended to cover situations where a Movement Director is removed from his position permanently as punishment for a specific offense or offenses, or temporarily as a corrective measure to insure that he will not commit the same or similar offenses in the future when he is returned to his regular position.

The record in this case is convincing that Carrier was not motivated by any intention to "punish" claimant for his shortcomings; it is equally clear that Carrier had no thought that its action would cause claimant to overcome his shortcomings and become an efficient employe again. Just the opposite was true—Carrier was convinced that claimant could no longer do his job, and no amount of correction would change this situation. On this state of facts, it cannot be said that Carrier's action in disqualifying claimant was "discipline"; therefore, the "Discipline" rule is not applicable.

The precise question of whether action similar to that of the Carrier in this case amounts to "discipline" was considered by this Division in Award No. 5071. There, a contention similar to the one made by Claimant here was disposed of as follows:

> "Finally the Organization urges the Carrier violated Rule 45 of the Agreement providing an employe shall not be disciplined or dismissed unless apprised in writing of the specific charge against him. There is no merit to this contention. This was not a discipline or dismissal case but one where an employe was displaced from her position on grounds of having failed to perform its duties in a reasonably efficient manner. . . ."

Since the discipline rule is not applicable, there was no requirement upon the Carrier to provide claimant with the notice and hearing required by that rule. Nor does it appear that Carrier violated any other rule of the agreement in its treatment of claimant; no specific rule is found in the Agreement covering the procedure for disqualification of an employe for lack of ability

to perform the duties of his position. Rule 2-B-4, urged as applicable by Carrier, does not deal with procedure and has no bearing on this case. Regulation 7-B-1, which deals generally with the rights of employes who feel that an injustice has been done them in other than discipline matters, was available to claimant. Relying upon the applicability of Regulation 6, he followed the appeal provisions of Regulation 7-A-1 relating to discipline rather than those of Regulation 7-B-1; however, it is clear from the record that in so doing, he received the same procedural rights as if he had availed himself of the procedure of 7-B-1. We conclude that no rule of the Agreement was violated.

This is not to say that there are no limitations upon Carrier's right to disqualify an employe for incompetence. Carrier is subject to the sound principles enunicated in many Awards of this Division wherein the Carrier's right to judge the fitness and ability of employes seeking to qualify for positions has been involved. These Awards have held that there must be substantial evidence in the record to support Carrier's conclusion; and that the conclusion must not be reached in disregard of the evidence so as to be arbitrary, capricious or unreasonable, and that it shall not be based upon bias or prejudice.

In this case, we are convinced from the whole record, including the submissions, transcript of the "hearing" and various letters of appeal and decision, that there is substantial evidence to support Carrier's conclusion that claimant was no longer qualified for the job of Movement Director. There is no evidence of bias or prejudice against claimant. No attempt was made to suspend or dismiss him from service and he is now filling a position for which he is qualified. Claimant's shortcomings had been apparent over a substantial period of time and had been called to his attention on previous occasions; it appears that the Carrier delayed its action for some time out of consideration for his long service.

It is unfortunate that in the apparent absence of any established procedure on the property in cases such as this, the Carrier chose to proceed in a manner which approximated the required procedure under Regulation 6. Such handling could only lead to a belief on claimant's part that Regulation 6 was applicable and was being misapplied, and to general confusion and misunderstanding on both sides. However, this does not change the rule, and for the reasons set forth above, we find that Regulation No. 6 is not applicable to this case and there was no violation of the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of March, 1956.