

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The action of the Louisville and Nashville Railroad Company, hereinafter referred to as the "Carrier", was discriminatory, arbitrary, whimsical, capricious and contrary to the wording and intent of the Mediation Agreement executed at Washington, D.C., on May 9, 1955, by and between the Carrier and the American Train Dispatchers Association, et al., when on or about November 14, 1955, it discharged Mr. O. W. Nettleship, Train Dispatcher employed in the Louisville, Kentucky office of the Carrier.

(b) The Carrier shall now reinstate Claimant O. W. Nettleship to service as train dispatcher with all seniority and all other rights unimpaired, and shall compensate him for all wage loss suffered as a result of the Carrier's unwarrantable action.

OPINION OF BOARD: At the outset we must treat with Organization's challenge that Carrier Exhibit "BB", beginning at page 29 of the record, was not presented in the handling on the property and is, therefore, inadmissible here under Circular 1.

The exhibit in question is a compilation of Claimant's service record prior to the incident here in dispute.

While the exhibit itself, a typed compilation, was not presented in that physical form to the Organization on the property the Carrier asserts that the information contained in the exhibit (Claimant's service record) was "discussed at some length" with the Organization in the handling on the property. This the Organization does not deny. We will, therefore, accept in this record Mr. Nettleship's prior service record.

The facts of the case are not in dispute. Organization concedes Claimant's action on October 27, 1955 was a serious offense, but charges that Carrier's action in discharging Claimant on November 14, 1955 was "discriminatory, arbitrary, whimsical, capricious and contrary to the wording and intent of

the Mediation Agreement executed at Washington, D. C., on May 9, 1955" between these same parties.

The Mediation Agreement referred to ended a work stoppage which had occurred on this property. It is not here involved and the Organization has not proven otherwise.

The record discloses that the Claimant admitted the investigation by Carrier of the accident was "conducted in a fair and impartial manner."

The many contentions of the Organization in support of its position are contained in this record and need not be repeated here.

Because this Division has held on many occasions that the burden of proof rests on him who seeks its allowance, we must and do conclude that the Organization has failed to prove that Carrier's action was "discriminatory, arbitrary, whimsical, capricious or contrary" to any Agreement here applicable.

From the record, there can be no doubt that Claimant's transgression of October 27, 1955, coupled with his very poor service record prior to that date, provided sufficient justification for Carrier's dismissal action. Awards 7018 and 7071.

A denial Award is in order.

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 Employees involved in this dispute are respectively Carrier and Employees 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1958.