# Award No. 8502
# Docket No. TD-8344

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Carroll R. Daugherty, Referee

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION

## THE NEW YORK CENTRAL RAILROAD COMPANY

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

(a) The New York Central Railroad Company, hereinafter referred to as "the Carrier," violated the currently effective agreement with Claimant Organization, including Article 9 thereof, when it disqualified and removed Train Dispatcher C. J. Flagg from his assigned position as train dispatcher on June 17, 1955, without a proper hearing, upon a precise charge, and upon evidence unsustained by the record of investigation held on June 24, 1955, which action was unjust, unreasonable, arbitrary and in abuse of the Carrier's discretion.

(b) Train Dispatcher C. J. Flagg be restored to the position of train dispatcher without loss of seniority, his record cleared and he be compensated for net loss of wages resulting from Carrier's unwarranted and unsustained action.

**OPINION OF BOARD:** On June 17, 1955, Claimant Flagg, second-trick dispatcher at Watertown, New York, had three trains involved in the instant dispute under his direction and control: (1) Extra Freight Train No. 1099 North, symbol number DNI, composed of three diesel units, 94 cars, and a caboose; (2) First class passenger Train No. 609 North, consisting of a diesel-powered passenger unit, known as a Budd Car; and (3) First class passenger Train No. 8 South, composed of engine and six cars.

At Norwood, New York, is a sidetrack that can be entered from the main track by northward trains through either of two switches. Between said two switches the sidetrack can clear 53 freight cars. At or about 5:55 p.m. on June 17, 1955, freight train DNI, having previously switched 65 of its cars to the connecting Rutland Railroad at Norwood, had moved into said sidetrack. Train No. 609 North at that time entered the sidetrack by the first or southerly of the two switches and struck the rear end of DNI, resulting not only in considerable damage to Carrier's equipment but also in injuries to 14 passengers and two train service employes.

The main events leading up to the accident are not in dispute and may be summarized as follows: (1) Before arriving at Norwood on above date train DNI North had been running ahead of train No. 609 North, with order (T.O. No. 531) to continue until overtaken. (2) At or about 4:44 p.m. on said date Claimant issued Train Order No. 532 to train No. 609 North to meet (pass) train No. 8 South at Norwood. (3) At or about 5:20 p.m. DNI arrived at Norwood, where it received copy of Train Order No. 535 asking train No. 8 South to wait at Massena (north of Norwood until 5:35 p.m., in order that DNI should have time to deliver the 65 cars to the Rutland. (4) At 5:25 p.m. train No. 609 North, having received copy of Train Order No. 531, departed from Canton, second station south of Norwood. (5) DNI, having made its delivery, pulled into the sidetrack at Norwood (first switch) about 5:38 p.m. with 29 cars and caboose. (6) At or about 5:47 p.m., Claimant transmitted a message (not Train Order) to the crew of No. 609 North, telling them to enter the Norwood sidetrack via the first switch behind DNI and to back out via said switch and proceed north after No. 8 South had passed.

On June 20, 1955, Claimant (and other employes involved in the accident) were notified by telegram to "attend an investigation for the purpose of determining responsibility" for the damage and personal injuries resulting from the collision. The message concluded with "Bring representation if desired". The investigation, held at Watertown on June 24, 1955, was attended not only by said employes and carrier officials but also by inspectors of the Federal Interstate Commerce Commission and of the New York State Public Service Commission. It appears from the record that (1) some 1700 feet south of the first switch there was a track-side block signal permanently showing a caution marker which required any northward train to proceed preparing to stop at the next switch or signal; (2) the crews of DNI and 609 North had been in telephonic communication before the accident and knew their respective locations and what was to be done; and (3) the engineer of 609 North was unable to stop his Budd Car short of DNI because the brakes and the anti-wheel-slide device failed to function properly.

On June 27, 1955, Claimant was notified by Carrier that he was disqualified as train dispatcher. He would be allowed to qualify as a telegraph operator or as agent. After taking the examination and working a few days he declined further assignments as operator.

The Employes contend as follows: (1) Carrier violated Article 8(b) of the Agreement in that (a) Carrier failed to make a precise, written charge; and (b) Carrier's telegram did not say that there would be a hearing. (2) The evidence of record at the hearing did not support the discipline administered to Claimant, in that (a) Carrier failed to establish that he had violated any operating rule of Carrier; and (b) he had sent the message (instead of a Train Order) to 609 North in accordance with long-established past practice, the training he had received in learning the dispatcher job, and the knowledge or acquiescence of certain carrier officials.

Carrier, in denying these allegations, contends that the evidence adduced at the investigation establishes Claimant's violation of (1) Special Instruction S-90, contained in St. Lawrence Division Timetable No. 76; and (2) Operating Rules 201 and 220. Special Instruction S-90 says that Northward first class trains shall take the second switch in taking sidings. The relevant portion of Rule 201 says that, for train movements not covered by the time-table, train orders will be issued. The relevant portion of Rule 220 says that a train order continues in effect until fulfilled, superseded or annulled.

This Division's Award No. 8431 set forth a summary of principles that the Board, in a long series of awards, has developed and applied to various kinds of discipline cases. To those so set forth should be added the following: In applying said principles the Board does not operate with the strictness and rigidity of criminal courts in respect to possible technical defects in procedure on a carrier's property. Where such defects may exist, the compelling question is: Were the accused's rights actually prejudiced thereby? Was he thereby really denied due process of law, his "day in court", or other substantive rights properly his as a citizen in an industrial democracy.

With all the above in mind, these principles are now to be applied to the facts of the instant case and to the Employes' contentions. The Board rules as follows: (1) The Carrier's above-mentioned rules involved in this case are reasonably related to the orderly and efficient operation of its business. (2) There is no evidence that Claimant was not informed about said rules. Nor is there any persuasive evidence in the record of the investigation that he was not aware of possible penalties for failure to conform to Carrier's rules. (3) In the investigation there is no evidence that Carrier had enforced these rules in a discriminatory manner, to the prejudice of Claimant. The material presented by the Employes after the investigation (alleging that (a) other dispatchers through messages had put No. 609 into the sidetracks via the first switch; (b) Claimant while in training had been told this procedure was proper; and (c) the crews of the trains had sometimes used the first switch without any instructions) establishes only that other personnel had violated the rules; it does not establish that Carrier winked at or implicitly approved of such other violations. (4) Substantial evidence, including admissions by Claimant, sustained the Carrier's decision that he had violated Special Instruction S-90, in conjunction with Operating Rule 201. It does not appear that he violated Rule 220, because Train Order No. 532 simply told Train No. 609 North and Train No. 8 South to meet and pass at Norwood, and this meeting was accomplished as intended. (5) The hearing and the announcements of the decision were timely, as required by Article 8. (6) Claimant's rights were not prejudiced by omission of the word "hearing" from the notice delivered to Claimant by Western Union; he must have known that a hearing was to be held in respect to his participation in the accident, because Carrier told him in the message to bring representation if he wished. Nor was there prejudice of moment because Carrier did not specify in said notice that Claimant was being charged with violation of the three operating rules mentioned above. At the investigation all the employes involved were thoroughly questioned as to their respective roles and had ample opportunity to answer and testify on all relevant matters pertaining to defenses against all possible charges. In short, the Employes have failed to establish that the hearing was arbitrary, capricious, unfair, discriminatory, or prejudiced to Claimant's rights. (7) The degree of discipline, namely demotion, imposed by Carrier was reasonably related to the seriousness of the proven offense. The record shows no previous serious dereliction of duty by Claimant for which he had been warned. It also shows that the immediate cause of the accident was the faulty brake system of the Budd car, something with which Claimant had no connection and for which he had no responsibility. The accident would have occurred if Claimant had issued a train order instead of a message to direct No. 609 North to enter the sidetrack at the first instead of the second switch.

Carrier, however, did not ground its discipline on faulty judgment by Claimant, namely that he should have not have had No. 609 enter the first switch but should have let Special Instruction S-90 stand, thereby having said train enter the second switch. Carrier based its discipline mainly on Claimant's proved violation of Rule 201 in conjunction with Special Instruction S-90.

Therefore, even if an accident had not occurred—and in the light of all the above-enumerated considerations—this Board is not disposed to overturn Carrier's decision. Carrier's operating rules and instructions, here found to be reasonable and necessary for the fulfillment of its responsibility to passengers and shippers, are not lightly to be disregarded by the employes subject thereto. Employes may think they have ways of handling situations that are superior to those encompassed in Carrier's rules. Employes should stifle such notions. They are not management. Management has the sole right to promulgate as well as enforce reasonable operating rules. Employes, save under circumstances of true emergency, have the obligation of obeying said rules.

In the light of all the above the instant claim cannot be sustained.

**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 Carrier did not violate the Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1958.