

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad, that:

1. The Carrier violated the parties' Agreement when on February 27, 1960, it dismissed Telegrapher H. Morgan without an investigation as provided by Rule 24 of the Telegraphers' Agreement.
2. The Carrier shall restore Telegrapher H. Morgan to the Carrier's service with all rights unimpaired and compensate him for all losses incurred by reason of the Carrier's violative act.

OPINION OF BOARD: The Petitioner in this case contends that the Carrier violated the terms of the Telegraphers' Agreement when he was discharged. At the time of his discharge he was working as a Train Dispatcher and as admitted at the investigation he violated Rule 976 of the Carrier's Rules and Regulations of the Operating Department.

Rule 976 provides:

"In CTC limits, movement of motor cars must be protected by placing signal or signals in stop position and applying red markers to lever or levers. Motor car operators must be instructed to call immediately on arrival at point of communication and markers must not be removed nor signals cleared until he does so. When furnishing a lineup for motor car operators to a location where communication is not available, a time limit must be specified and signal or signals placed in stop position and red markers placed on lever or levers. Signals must be held at stop and markers remain on levers until time limit has expired. Dispatcher and motor car operator must make record of time in writing, same to be repeated back by

the motor car operator. Dispatcher should explain to the motor car operator that no protection will be afforded after the specified time."

The Petitioner was granted a hearing and all of the procedural requirements established in the Agreement between the Dispatchers and the Carrier were complied with. The contention of the Petitioner is, however, that the investigation conducted could not relieve him of his rights under the Telegraphers' Agreement. Being more specific, it is his contention that the Telegraphers' Agreement provides for appeals not found in the Dispatchers' Agreement and in view of the fact that while he had been promoted under Rule 16 his seniority was still as a Telegrapher and the depriving him of these rights was in violation of the Agreement.

Rule 24 of the Telegraphers' Agreement provides:

"(A) An employe who has been in the service more than ninety (90) days, or whose application has been formally approved, shall not be disciplined or dismissed without an investigation. When formal investigation is necessary it will be held as soon as possible, ordinarily within ten (10) days. The accused will be apprised of the charge against him and will be notified sufficiently in advance to enable him to be represented by the duly authorized committee or another employe of his choice at the hearing and the testimony will be confined to the charge of which the employe is accused.

"(B) A decision will be rendered within ten (10) days after completion of hearing. If an appeal is taken, it must be filed with the next higher official and a copy furnished the official whose decision is appealed within ten (10) days after date of decision. The hearing and decision of the appeal shall be governed by the time limits of the preceding section.

"(C) The right of appeal by employes or representatives, in regular order of succession and in the manner prescribed up to and inclusive of the highest official designated by the Railroad to whom appeals may be made is hereby established.

"(D) An employe on request will be given a letter stating the cause of discipline. A transcript of the evidence taken at the investigation or on the appeal will be furnished on request to the employe or representative.

"(E) If the final decision decrees that charges against the employe are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employe will be returned to former position and paid for all wages lost less amount earned in any other service.

"(F) The application of 'Discipline by Record' in lieu of actual suspension will be applied by employes named in Rule 1, in the following manner:

"(G) Discipline will be maintained by Reprimands, Demerits and Dismissal. Record of Reprimands, Demerits or Dismissal will be made in accordance with the Investigation Rule now in effect, or as hereafter amended. A reprimand or record of Demerits will not be entered in an employe's record without written notice to him.

"(H) An employe may examine his own record during business hours, but the record will be open to none others except the Division and General Officers of the Company; provided, however, that the General Chairman and Local Chairman may, upon request to the proper officers, examine such records in the presence of an officer of the Company. Employes are urged to inspect their records periodically to avoid all misunderstandings.

"(I) Not less than ten Demerits will be assessed, and in multiples of ten, but in no case more than sixty for any one offense.

"(J) An accumulation of ninety Demerits will cause dismissal from the service.

"(K) Reprimands and Demerits will be cancelled by subsequent satisfactory service as follows:

Reprimand or 10 Demerits by a clear record of 3 months

20 Demerits by a clear record for 6 months

30 Demerits by a clear record for 9 months

40 Demerits by a clear record for 12 months

50 Demerits by a clear record for 15 months

60 Demerits by a clear record for 18 months

For example: If an employe has a debit of forty Demerits for some offense, and should thereafter have a clear record for six months, he will secure a credit or the clearing from his record of twenty Demerits. If, during the next three months, he should receive a Reprimand or additional Demerits for some offense, no credit for that three-month period following the original discipline of forty Demerits will be allowed, but if for the next three-month period of the year following discipline originally being administered record has been clear, he will secure credit or the clearing from his record of ten Demerits, thus resulting in a total credit or the clearing of thirty Demerits from his record during the twelve months period following the first discipline applied.

"(L) Credits for a clear record except special merit marks, will be given only when there are Reprimands or Demerits standing against the employe.

"(M) Absence from the service for thirty or more days will be deducted in calculating periods of clear service, sickness or other good causes for absence excepted.

"(N) A perfect record is one against which no unfavorable entry has been made; a clear record is one on which all unfavorable entries have been cancelled.

"(O) Acts of disloyalty, dishonesty, desertion, intemperance, immorality, insubordination, incompetency, wilful neglect of duty,

inexcusable violation of rules, making false reports or statements or concealing facts concerning matters under investigation will, as heretofore, subject the offender to dismissal from the service after investigation as provided in Paragraph (G) of this rule.

“(P) Special merit marks will be entered on the record of employes at all times for notably excellent conduct, deeds of heroism, conspicuous loyalty, exceptional judgment in emergencies, commendable performance outside the line of duty and other meritorious conduct. Such special merits will stand credited on the record of the employe until used to reduce or cancel subsequent entries of reprimands or demerits. For example: An employe who has been credited with thirty special merits for conspicuous service and is subsequently assessed with thirty demerits for an offense will be considered as continuing to possess a clear record.”

While on the other hand Rule 19 of the Dispatchers' Agreement provides:

“(a) A train dispatcher who has been in the service more than ninety (90) days or whose application for employment has been approved, shall not be demoted, disciplined or discharged without proper investigation being held as provided for in the following paragraphs. Suspension pending investigation shall not be deemed a violation of this principle.

“(b) When charged with, or involved in, an offense likely to result in his demotion or disciplinary action, he will be advised in writing of the specific charge or complaint, within thirty (30) days of the date of such offense, at time notified of such investigation, which shall be held by the Superintendent or his representative within ten (10) days from the date of the notice. He shall have the right to be represented by a train dispatcher of his choice and/or an official of the American Train Dispatchers Association. He shall be given a reasonable time to secure the presence of necessary witnesses. Decision shall be rendered within ten (10) days from the date of the close of the investigation.

“(c) If decision is against the train dispatcher, written appeal may be made to the highest officer designated to consider appeals; copy of such appeal to be furnished the officer whose decision is so appealed. Such appeal shall be made within fifteen (15) days thereafter, unless otherwise agreed to, and decision rendered as promptly as possible.

“(d) A train dispatcher who considers himself otherwise unjustly treated will have the same right of investigation and appeal as provided in this rule, if written request is made to his superintendent within thirty (30) days from cause of complaint.

“(e) If decision decrees that the charges or complaint against the train dispatcher were not sustained, his record will be cleared of such charge or complaint; if suspended or dismissed, he will be reinstated and will be compensated for net wage loss, if any, suffered by him.

“(f) If a stenographic record of an investigation is taken, the train dispatcher involved or his representative shall be furnished a copy.”

The Organization has presented Awards 6868, 6250, 2941 among others in support of their position. These awards are distinguishable, however, because in all of those cases the employe involved was in an excepted or supervisory position wherein no investigation or even grounds for discharge were necessary before the Carrier could act. In those cases the Board very properly held that the man continued to hold his seniority under the applicable agreement and he could not be discharged without the necessary impartial investigation provided for in the agreement under which he had seniority.

The Organization urges that in light of Rule 16 the same is equally applicable.

Rule 16 D states:

“(D) Employes who have been in actual service on positions covered by this Agreement for a period of one year or more who are promoted to Official Positions, Train Dispatchers, Supervisory Agents not covered by this schedule, and such other promoted employes as may be mutually agreed upon between the Management and the Organization, will retain seniority; and will continue to accumulate seniority while on such positions for a period of five (5) years and thereafter by mutual agreement between designated representatives of the Company and the Organization.”

The Organization points out that there is a system of demerits provided for in the Telegraphers' Agreement (See Rule 24 previously referred to) which does not exist under the Dispatchers' Agreement and that the Petitioner was thereby deprived of these rights.

While this is a case of first impression, at least from the awards submitted to this referee, he does not believe that the Petitioner was deprived of any rights by having the hearing held pursuant to the Dispatchers' Agreement. The closest award in point is First Division Award No. 13322.

The Petitioner had accepted the promotion to dispatcher and at the hearing called on a dispatcher representative to be with him. While there are some procedural differences in the two agreements the fact is that at the hearing the Petitioner admitted that he violated Rule 976 of the Working rules which resulted in the wreck. The record also shows no effort for the Petitioner to exercise the appeal rights established under the Dispatchers' Agreement.

Finally, the Organization argues that the offense committed here could not have been committed by a telegrapher. However, the Telegraphers' Rules provide in Rule 986 the identical statement as provided in Rule 976 and therefore as a telegrapher he was acquainted with the rule. Were this a minor violation where the demerit system might be applicable, the situation might be different but in light of Rule 24 (o) this referee does not believe that any substantive rights were deprived the Petitioner.

Furthermore, if the position of the Organization were correct, then the Carrier might be put into the position of needlessly carrying on several investigations, even though, as here the man admitted the violation. While

a man's seniority rights are sacred and he is entitled to a fair and impartial investigation on the premises before any action may be taken, it is our judgment that this was complied with.

In light of the above this referee does not feel that the claim should be sustained.

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

That the parties waived oral hearing.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of June, 1961.