

Award No. 10112

Docket No. TD-12186

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) That the action of the Chicago, Rock Island and Pacific Railroad Company, (hereinafter referred to as "the Carrier"), in terminating the employment and all employment rights of Train Dispatcher G. R. Reynolds, on or about September 11, 1959, following hearing held pursuant to the provisions of Article 7 of the effective schedule agreement between the parties, was arbitrary, capricious, unjust, in abuse of managerial discretion and therefore in violation of the agreement.

(b) The Carrier shall now reinstate Claimant G. R. Reynolds to service as train dispatcher with all seniority and other rights unimpaired and shall compensate him for all wage loss suffered as a result of the Carrier's unwarranted and improper action.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an agreement between the parties to this dispute bearing an effective date of January 1, 1950. A copy of this Agreement is on file with your Honorable Board and by this reference is made a part of this submission as though it were fully incorporated herein.

Article 7(a) and (b) are particularly pertinent to this dispute and, for the ready reference of your Honorable Board, are quoted as follows:

"ARTICLE 7. INVESTIGATIONS—APPEALS—CLAIMS.

(a) Any train dispatcher who has been in service more than sixty (60) days, or whose application has been formally approved, shall not be demoted, disciplined or discharged without proper investigation being held as provided in the following paragraphs. Suspension pending the investigation shall not be deemed a violation of this principle.

(b) When charged with, or involved in, an offense likely to result in demotion, discipline or dismissal, the train dispatcher will be advised in writing of the precise charge or complaint at time notified of such investigation, which shall be held by the Superintendent or his representative, within ten (10) days of the date of notice or date

matters, there must be a clear showing that the disciplinary action taken was without proper cause; that the Carrier's action was arbitrary, capricious, unfair and unreasonable."

It is hereby affirmed that all of the foregoing is known by the Organization's representatives and by this reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 29, 1959, Claimant G. R. Reynolds, a Carrier employe for approximately forty-two years, was working alone the 11:59 P. M. to 7:59 A. M. shift as Train Dispatcher at the Carrier's Fort Worth, Texas, Dispatching Office.

The Claimant was operating a Centralized Traffic Control Panel which guided and directed the movement of trains between Fort Worth, Texas, and Dallas, Texas. Other work functions performed by the Claimant were the duties of the former Night Chief Dispatcher, the former Night Report Clerk and the handling of city telephone calls in addition to the issuing of written train orders on the other two subdivisions of his assignment.

At about 1:29 A. M. the Claimant issued written Train Orders 203, 204 and 205 to Telegrapher J. W. Thornton, located at Waurika, Oklahoma, to provide for movement of Extra 675-South out of Waurika, but failed to protect the movement of Extra 675-South against the movement of Extra 131-North on a single track line.

At about 1:45 A. M. the Claimant discovered his error and orally notified Telegrapher Thornton to hold Extra 675-South at Waurika until Extra 131-North had passed. Mr. Thornton contacted the train crew of Extra 675-South by radio and gave the Claimant's instructions to Conductor Witherspoon—who in turn gave Engineer Echols the same instructions. The entire conversation between the Messrs. Witherspoon and Echols was overheard by Mr. Thornton. Brakeman Woods of the crew of Extra 675-South subsequently contacted the Claimant on the dispatcher's telephone and assured Claimant that his instructions had been received and would be carried out.

Extra 131-North, reported to arrive around 2:15 A. M., reached Waurika at 3:25 A. M.

Claimant Reynolds sent the following communication to Mr. D. E. Cast, Chief Dispatcher:

"Ft. Worth, Texas, August 29, 1959

"D.E.C.

"I fixed Extra 675 South out of Waurika this A. M. and failed to restrict him for Extra 131 North, noticed this error immediately after Extra 675 South had been cleared at Waurika but too late to catch the crew, had operator contact the crew on radio and tell them to remain at Waurika for Extra 131 North.

"I have no explanation as to why I did this, it was my intention when started to fix extra 675 South to make the running order read after arrival of Extra 131 North.

"G. R. Reynolds

"Note: D.E.C. to which this is addressed is Mr. D. E. Cast, Chief Dispatcher."

Claimant was charged with violation of Rule 53 of Rules and Instructions for Train Dispatchers, the pertinent portion of which reads as follows:

"Carefully inspect train sheet and train order book and provide for its movement against all opposing extras."

Under date of September 1, 1959 Claimant received notice to appear at an investigation on Friday, September 4th at 10:00 A.M. in the office of Assistant Superintendent W. H. Hogle, Forth Worth, Texas. The Claimant and his representative Mr. W. E. Murphy, General Chairman, American Train Dispatchers Association, attended the investigation. Claimant testified on his own behalf and both Claimant and Mr. Murphy signed the transcript of the hearing indicating it to be an accurate copy of the proceedings.

On September 11, 1959, through the medium of Form G-126 F, signed by Mr. D. J. Smith, Claimant was informed that he was dismissed from Carrier's service for violating Rule 53 of Rules and Instructions for Train Dispatchers.

Subsequently, an interchange of correspondence took place between the Messrs. W. E. Murphy and G. E. Mallery, Vice President-Personnel, Chicago, Rock Island and Pacific Railroad Company. Mr. Murphy in his letter of September 25, 1959, made a formal appeal on behalf of Claimant based on the premise that the discipline meted out was "unjustly harsh, capricious and not in keeping with the general policy of disciplinary action in cases of similar nature . . .". Mr. Murphy further cited as basis for consideration—Claimant's forty-two years of satisfactory service without a prior investigation; the haste, completeness and effectiveness of Claimant's corrective action; and the readiness and opened faced honesty of Claimant's admission of error.

Mr. Mallery, in his letter of October 15, 1959, refused to alter the Claimant's dismissal. However, as the result of another letter of appeal from Mr. Murphy (which is missing from the record but reportedly was dated February 19, 1960)—Mr. Mallery, in his reply to Mr. Murphy dated March 8, 1960, agreed to reinstate Claimant on a leniency basis to the position of telegrapher. Mr. Murphy, in his letter of March 29, 1960 to Mr. Mallery, rejected that offer.

Both parties complied with all procedural rules and the dispute is properly before this Board.

At the risk of over simplifying the issues in this case—the Board would like to state them as follows:

1. Did the Claimant make a serious error?
2. Did the Claimant properly correct his error?
3. Does the Claimant's forty-two years of satisfactory service entitle him to reinstatement to the position of Train Dispatcher with seniority rights unimpaired?
4. Was the punishment arbitrary, excessive or too severe and not in keeping with the offense and the past disciplinary practices of the Carrier?

Let us now carefully and objectively analyze and answer each of those questions:

First Question: "Did the Claimant make a serious error?"

It is doubtful if anyone will or can deny the seriousness of the Claimant's error. It is such errors as the Claimant's that cause catastrophic railroad disasters. The fact that no property damage or loss of life occurred is but a fortunate circumstance.

Railroads—if they are to pursue their business efficiently and profitably must have the earned confidence and support of the public. Such confidence is earned not by tracks, trains, cars, bridges, signals or stations but by PEOPLE. People—employed, trained and directed by the Railroads to execute their assignments properly and efficiently. People—who will rigidly follow the necessary and important railroad rules set forth for their guidance and direction. People—who will strive to earn the confidence and active support of the public by the manner in which they perform their jobs.

It might be harsh to say, but in such positions as those of Train Dispatchers—a second chance—following such a serious error as the Claimant's—should only be given when the contributing or attending circumstances are rare and unusual. The Board does not consider the circumstances in this case in that category.

Second Question: "Did the Claimant properly correct his error?"

The answer—based on the Claimant's own statement—is no. In fact, the Claimant compounded his initial error by not following the required remedial procedure. The procedure the Claimant did follow was hazardous at best and not designed to produce the safest results.

The development and introduction of railroad work rules and procedures has happened not by accident but by DESIGN. The rules and procedures which have been evolved over many years are not haphazard regulations but are the products of necessity and are based on the needs provided by experimentation and verification.

The Organization maintains that because of the urgency of the situation there wasn't time for the Claimant to prepare written train orders and secure the necessary signatures. The record, however, doesn't support such a contention but does reveal that there was a period of some thirty minutes—much more than ample time—for the Claimant to have executed and issued proper train orders.

Now let us consider the Third Question: "Does the Claimant's forty-two years of satisfactory service entitle him to reinstatement to the position of Train Dispatcher with seniority rights unimpaired?"

In answer to this question—the Board must repeat a portion of its answer to Question One—namely—"It might be harsh to say, but in such positions as those of Train Dispatchers, a second chance, following such a serious error as the Claimant's, should only be given when the contributing or attending circumstances are rare and unusual. The Board does not consider the circumstances in this case in that category."

The Organization maintained that the Claimant's job of operating a Centralized Traffic Control Panel required "his careful and undivided attention." The Organization maintained—as a mitigating circumstance the fact that the Claimant was also responsible for "the performance of duties of the former Night Chief Dispatcher, the former Night Report Clerk, and also

handling all city telephone calls." As a result of these additional duties, the Claimant had numerous interruptions and was not able to give the Centralized Traffic Control Panel his undivided attention.

Nowhere in the record was there any testimony or evidence that the Claimant's duties were burdensome or onerous; nor was any evidence offered specifically delineating the duties and functions of Train Dispatchers.

Finally, the Board comes to the Fourth Question: "Was the punishment arbitrary, excessive, or too severe and not in keeping with the offense and the past disciplinary practices of the Carrier?"

Here again the Board believes the answer is—No. Of course, it is regrettable that the Claimant did not accept reinstatement as a telegrapher when that position was offered him. However, that offer was refused and, of course, it now ceases to exist.

Accordingly, after a careful and a objective study, analysis and evaluation of the record, the Board rules in favor of the Carrier and denies the Claim.

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 6th day of October, 1961.