

Award No. 11220

Docket No. TD-12561

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY COMPANY

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

(a) That the action of the Southern Railway Company, (hereinafter referred to as "the Carrier") in dismissing Night Chief Dispatcher E. L. Beale from its service, as of November 5, 1958, was in violation of the schedule Agreement between the parties, was not supported by the evidence of record and was arbitrary, unduly harsh and in clear abuse of managerial discretion.

(b) The Carrier shall now be required to compensate Claimant E. L. Beale for all loss of compensation from the date withheld from service, October 29, 1958, until restored on November 11, 1958, and, further, that his record be cleared of the charge involved.

OPINION OF BOARD: The Carrier through its Columbia Division Superintendent, on July 8, 1957, issued Bulletin No. TM-225, providing:

"Referring to my Bulletins TM-198 and TM-199, June 10th and 12 respectively.

"Effective immediately amend instructions covering the movement of cars equipped with riveted yoke couplers to provide that such cars, either loaded or empty, may be handled in through freight trains just ahead of the caboose, except that cars requiring spacing such as gasoline, etc. may be properly spaced ahead of the caboose."

On October 28, 1958 Train No. 52 arrived with a riveted type coupler yoke. This car was the subject of conversation between the Claimant and the yardmaster, and it was decided by them it would be safe to operate said car on Train 52, a through freight, although it was not properly spaced.

No accidents or delays resulted from the operation of this car.

On October 29, 1958, the Claimant was withheld from service, and an investigation was held on November 1, 1958.

On November 5, 1958, the Claimants employment was terminated for failure to comply with bulletins, notices and instructions.

The Claimant was reinstated and allowed to return to service by the Carrier on November 11, 1958.

From the foregoing, it is not difficult for us to determine whether the penalty imposed on the Claimant is just. The Claimant admitted his failure to comply with the bulletin.

There is no justification in the record presented to us to interfere with the action of the Carrier or find that there was an abuse of discretion.

The condoning of violations of bulletins, rules and instructions would impair the welfare of the public and employes.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1963.

LABOR MEMBER'S DISSENT TO AWARD 11220, DOCKET TD-12561

The dismissal of the Claimant was arbitrary, unduly harsh and in clear abuse of managerial discretion, particularly in view of the fact that Claimant was the only person to suffer monetary loss.

Award 11220 is in error and I dissent.

/s/ R. H. Hack

R. H. Hack, Labor Member