

Award No. 13778
Docket No. TD-15067

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GREAT NORTHERN RAILWAY COMPANY

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

(a) The Great Northern Railway Company, (hereinafter referred to as "the Carrier"), violated the schedule agreement between the parties, Article 26 thereof in particular, by its action in dismissing Train Dispatcher J. C. Shuman.

(b) The Carrier be required to reinstate Claimant J. C. Shuman with all rights unimpaired and compensate him for wage loss suffered as provided by Article 26 of the said schedule agreement.

OPINION OF BOARD: Claimant, a train dispatcher with almost 15 years seniority, was dismissed for his responsibility in the collision of two trains.

The record indicates that the accident was caused when one of the trains involved, Work Extra 203, proceeded past an authorized point, in defiance of an existing order, at a speed of 50 miles per hour and collided head-on with a train standing on the main track. Claimant was the train dispatcher on duty at the time and responsible for the area in question. There is no question but that he failed to comply with Operating Rule requirements that orders be transmitted in writing rather than by oral means. While the Petitioner raises some question that it was the practice at that time to transmit orders orally, we are not disposed to disregard a clear violation in the absence of more convincing evidence.

However, while Claimant was guilty of a rules violation, the record does not establish that he was responsible for the collision. We are satisfied that this is a correct evaluation of the record, even though we have given the Carrier's findings the full benefit of the presumptions called for by Award 9045 and similar disciplinary rulings.

Accordingly, though we are most reluctant to interfere in a case that involves the safety of men and equipment, we are constrained to find that

the discipline meted out is arbitrary and excessive. In view of the circumstances, substantial discipline may be approved but not to exceed a lengthy layoff.

We will direct that Claimant's dismissal be reduced to a one-year layoff and that he be reinstated to his position of train dispatcher as of November 25, 1964, with all rights unimpaired. He shall be compensated for all wage loss suffered between November 25, 1964, and the date of his reinstatement. This, of course, means that any wages received by him from any source during the said period shall be deducted from the amount of his compensation.

We have approved discipline as substantial as a layoff of one year only because of our regard for Carrier's enormous responsibility for safety and the prevention of accidents. That responsibility, however, cannot induce us to ignore the interests of the individual employee.

It may be noted that, contrary to the Petitioner's contention, we find that no reversible procedural defect was committed by Carrier in the giving of notice, conduct of the hearing or appellate consideration.

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 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 violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of July 1965.