

Award No. 14477
Docket No. TD-15683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier") violated the existing schedule agreement between the parties, Regulation 6 thereof in particular by its action in improperly withholding Train Dispatcher A. J. Rankin from service on November 15, 1963; requiring him to attend an investigation in Canton, Ohio on November 19, 1963; requiring him to attend an investigation in Cleveland, Ohio on November 20, 1963; and imposing discipline of five (5) days' suspension as a result of trial held on November 29, 1963, the record of which fails to support the Carrier's charge.

(b) The Carrier shall not be required to compensate Claimant Rankin, at the pro rata rate of train dispatcher, for each day held out of service and for each day of attendance at investigations and trial, namely, November 15, 16, 17, 18, 19, 20 and 29, 1963.

(c) In addition, Carrier shall now be required to clear Claimant Rankin's record of the unsupported charges and to reimburse him for "necessary expenses" in the amount of \$17.20 incident to his attendance at investigation at Canton, Ohio, on November 19, 1963.

OPINION OF BOARD: Two issues are presented: (1) Was Claimant held out of service—in the period from November 15, 1963 to November 20, 1963—in violation of Rule 6-A-1 of the Agreement; and (2) is there substantial evidence in the record to support Carrier's finding that Claimant was guilty of the following charge which was served upon him on November 25, 1963 and for which he stood trial on November 29, 1963:

"Failed to transmit and record correct records for the safe movement of trains WC-2, engine 9852 and No. 49 engine #5964, between Wall and Fairhope Block Stations on October 6, 1963."

If our finding on the second issue is affirmative we are then confronted with determining whether the discipline imposed was reasonable.

FIRST ISSUE

On the basis of a report that Claimant had permitted opposing trains to operate in the same block limits on October 6, 1963, Carrier precipitously held Claimant out of service pending investigation and possible charges. The investigation disclosed the report to be unfounded and Claimant was returned to service.

The pertinent Rule reads:

"REGULATION No. 6 — DISCIPLINE

"6-A-1. Trial. (a) Train Dispatchers shall not be suspended nor dismissed from service without a fair and impartial trial.

"(b) When a major offense has been committed, a Train Dispatcher suspected by the Management to be guilty thereof may be held out of service pending trial and decision."

The Rule is unambiguous. An indispensable condition precedent to holding an employe out of service without a fair and impartial trial is that a "major offense has been committed." The condition was not satisfied in this case. Therefore, Carrier violated the Agreement. We will award that Claimant be made whole for November 15 through 19, 1963, as prayed for in paragraph (b) of the Claim and expenses as prayed for in paragraph (c) of the Claim. We deny the prayer in paragraph (b) for compensation for November 20 and 29, 1963.

SECOND ISSUE

At the trial Claimant admitted that he entered an incorrect time in the record of train orders. We, therefore, hold that the finding of guilty as charged is supported by substantial evidence. The nature of the offense, however, is such that we find the discipline imposed — 5 days suspension — was excessive. We will award that the discipline be reduced to a reprimand to be placed in Claimant's record.

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 Carrier violated Rule 6-A-1 of the Agreement.

That the discipline imposed in that part of the Claim considered in
SECOND ISSUE of the Opinion was excessive.

AWARD

Claim sustained to the extent set forth in the Opinion.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1966.