

Award No. 16189
Docket No. CL-16564

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6032) that:

(a) Carrier violated the Agreement at Spencer, North Carolina, when it suspended Mr. L. C. Bowyer, Crew Caller, for fifteen (15) days on unproven charges that he was responsible for twenty-six (26) minutes' delay to Train No. 20 (2/48) at Spencer, North Carolina, September 16, 1964.

(b) Mr. Bowyer shall be compensated at his regular rate of pay for eleven (11) working days while suspended September 19, 1964, through October 3, 1964.

OPINION OF BOARD: Claimant, a Crew Caller, was suspended by Carrier for 15 days for his part in delaying departure of Train No. 20 on September 16, 1964 at Spencer, North Carolina.

The Organization's position is that Claimant was diligent in the performance of his duties, and that he should not be disciplined unless he was guilty of being negligent in the performance of his work; that even if Claimant could be considered guilty of causing a 1 or 2 minute delay to the train, mitigating circumstances, such as the conductor not giving the proper signal when he received the bills, preclude discipline; that Claimant was overloaded with work at the time, and further Claimant had difficulty locating Train No. 20.

It is undisputed that Train No. 20 was delayed and the record substantiates this fact. Claimant testified that when he arrived at the Old Spencer Depot to deliver the waybills to Train No. 20, he didn't see the train and then performed other duties; that when Assistant Trainmaster Young told him that he had better get the waybills to the train, he started walking without a light toward the rider and after having walked about 15 car lengths, Claimant hesitated to go any further due to not having a light with him; that as he saw Train No. 20 jerk as if pulling out, Claimant immediately contacted Yardmaster Cecil and informed him that he still had the waybills and by that time the train stopped.

Further, Claimant testified as follows:

"Q. Mr. Bowyer, if you had delivered the bills to Conductor Ellis the first time you went to Old Spencer Depot, would this delay have occurred?

A. No, sir.

Q. Will you accept responsibility for this delay to Danville Division Train No. 20 on this occasion?

A. If the train pulled at 5:05 A.M., and did not have the bills, and responsibility being as great as they are on my part, I will have to take the responsibility if the train was ready to pull, for my part of the delay."

It is clear from the evidence shown in the record that Claimant was responsible for the initial delay of Train No. 20 in departing Spencer, when he failed to deliver the waybills to the train's conductor prior to its initial departure at 5:04 A. M. Claimant attempts to excuse himself on the grounds that other employes contributed to the additional delay of the train's departure; however, this fact does not relieve Claimant of being responsible in initially delaying the train.

This Board has repeatedly held that our function in discipline cases is not to substitute our judgment for the company or decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty. A careful reading of the record in this instance shows that there was substantial evidence to sustain a finding of guilty against Claimant.

In regard to the penalty assessed in the case, the record clearly shows that the action of the Carrier with respect thereto was not so unjust, unreasonable or arbitrary so as to constitute an abuse of Carrier's discretion in imposing said penalty for said violation. Therefore, we must deny the claim.

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 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 5th day of April 1968.

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