

Award No. 16581

Docket No. TE-17023

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Nathan Engelstein, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The Pennsylvania Railroad, that:

Appeal of Block Operator T. H. Halloran from discipline of dismissal imposed by G-32 dated November 27, 1964 for the offense:

1. Violation of Rule G—Book of Rules for Conducting Transportation, being under the influence of intoxicants while on duty as Block Operator, Beverly Jct., October 23, 1964.
2. Violation of Rule 400-21 Failure to keep prescribed record of train movements for October 23, 1964, at Beverly Jct.
3. Assuming a position to induce sleep while on duty as Block Operator Beverly Jct., October 23, 1964.
4. Failure to display train order signal for eastbound movements at Beverly Jct. when Order No. 1 was in effect.

Carrier violated Regulations 6-A-1, Mr. T. H. Halloran shall be restored to the service with seniority and all other rights unimpaired and paid for all time lost since October 23, 1964.

OPINION OF BOARD: After a trial on November 5, 1964, in which Block Operator T. H. Halloran was charged with (1) violation of Rule G, being under the influence of intoxicants while on duty, (2) violation of Rule 400-N-21, failure to keep prescribed record of train movements, (3) assuming a position to induce sleep while on duty, and (4) failure to display train order signal for east bound movements on October 21, 1964, he was found guilty of all four charges and dismissed from service.

Mr. Halloran contends that Carrier did not meet the required burden of proof, that the testimony based largely upon one witness of Carrier on the major charge of alleged intoxication was insufficient to justify the dismissal. With respect to the charge of failure to keep prescribed record of train

movements for October 23, 1964, at Beverly Junction, Mr. Halloran admits a technical violation, but asserts that he kept the record of train movements on a piece of paper for transference to the train sheet at a later date. To the charge that he assumed a position to induce sleep while on duty, Mr. Halloran submits that he suffered from migraine headaches and his position was not designed to induce sleep but to make him more comfortable. Mr. Halloran in explaining his behavior on the charge of failure to display train order signal for each bound movements when Train Order No. 1 was in effect, points out that this train Order No. 1 was not addressed to train FW-8 but rather to "C&E" all trains via Hartsdale." He explains that there was no rule to display an order board for a train for which there is no train order addressed. He requests restoration to service and compensation for time lost since the date of the occurrence.

Carrier states that the record contains sufficient evidence to sustain the charges and to warrant the penalty of dismissal from service.

The record discloses that on October 23, 1964, at approximately 4:30 A. M., Mr. C. S. Lowe, Jr., Passenger Train-Master Division-Operator Chicago Division arrived at Beverly Junction Tower in response to a call from the Movement Director that there was a delay encountered by train FW-8 and he could not get an explanation from the man on duty. He found the door locked and when Mr. Halloran did not respond immediately to his knock on the door, he looked through the window with the aid of a lantern. He testified that Mr. Halloran was at a desk slouched down in a chair with his head forward. Mr. Halloran opened the door after Mr. Lowe rattled it a few times. In the conversation that followed Mr. Lowe stated that Mr. Halloran was slow in recognizing him, incoherent, thick tongued, and that his breath had an alcoholic odor. Mr. Lowe relieved him of his duties.

The transcript of the record also shows that Mr. Halloran arrived at work at 10:00 P. M. on October 22, when he relieved Mr. Richard Paschke, Block Operator. There is no indication that there was anything unusual about Mr. Halloran's appearance or conduct at that time. Mr. Klein, Train Dispatcher, testified that about 11:00 P. M., 1:30 A. M. and 2:15 A. M. he heard Mr. Halloran speak or had conversations with him. At these times he reported he sounded lucid and clear. Mr. Klein also said that Mr. Halloran was doing a good job and correctly copied train Order No. 1. Mr. Lowe's testimony shows that this order was written legibly.

Furthermore with respect to the complaint that the operator at Beverly Junction could not be understood when he was telephoned concerning Train FW-8, the record gives no direct evidence from the person who was alleged to have had this conversation with Mr. Halloran. Mr. Halloran testified that he was suffering from a migraine headache and nausea, and just before Mr. Lowe arrived at the tower he had returned from the washroom where he had vomited. He was reclining in his chair with his hands on his head before he answered the door. His immediate reactions and responses to Mr. Lowe were hesitant and uncertain because of his discomfort. Mr. Lowe did not find evidences of liquor in his locker or elsewhere in the room. Mr. Lowe refused Mr. Halloran's offer to examine his car for liquor. Mr. Halloran also testified that after his dismissal from duty he called the nearby police station and the Little Company Hospital to secure a sobriety test, but was not able to obtain one. The wife of Mr. Halloran testified that Mr. Halloran had been

receiving medical attention for migraine headaches and that he also had difficulty with his stomach.

In light of the evidence presented in the transcript of the hearing and the circumstances under which Mr. Lowe saw and spoke to Mr. Halloran, we find insufficient proof to support the charges that Mr. Halloran was guilty of being under the influence of intoxicants while on duty and assuming a position to induce sleep while on duty.

Although the transcript of the hearing shows that Mr. Halloran admitted his guilt of failure to keep prescribed record of train movements for October 23, 1964, and failure to display train order signal for east bound movements when Order No. 1 was in effect, he offered the explanation that he kept the record on a piece of paper to be transferred later to the train record and stated that he followed the accepted practice of not displaying an order board for a train for which there was no train order addressed. This explanation may be a mitigating factor but does not overcome the evidence to support the charges of violation of Rule 400-N-21 and failure to display a train order signal.

Since we find that Carrier failed to sustain its burden of proof for charges in Paragraphs 1 and 3 of the Statement of Claim and that the evidence supports the charges in Paragraphs 2 and 4, we have a valid basis for modifying the penalty assessed. We direct that Mr. Halloran be restored to his position as a Block Operator without compensation for the time he was out of service.

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 Claim is sustained in part and denied in part.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.

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