

Award No. 16725
Docket No. TE-17047

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:

CLAIM I

1. M. E. Hohman, a Block Operator with a seniority date of March, 1926, was improperly dismissed from the service of the Carrier, effective June 10, 1966, without consideration for the physical condition under which he was persuaded to work.

2. M. E. Hohman was denied due process of law when his Supervisor appeared as Chief Witness against him at the trial held on June 16, 1966, and then recommended and rendered the decision of dismissal.

3. Carrier violated Regulation 6-A-1, and M. E. Hohman shall be restored to the service of the Carrier with seniority and all other rights unimpaired, and paid for all time lost since June 10, 1966.

CLAIM II

1. L. E. Grace, an Extra Block Operator with a seniority date of December 28, 1965, was improperly dismissed from the service of the Carrier, effective June 10, 1966, for an alleged violation on June 10, 1966, notwithstanding the fact that he was not qualified at Hunt Block and Interlocking Station, but was assigned to post (train) and thereby not the Block Operator responsible for the operation of the station.

2. L. E. Grace was denied due process of the law when his supervisor appeared as chief witness against him at trial held on June 20, 1966, and then recommended and rendered the decision of dismissal.

3. Carrier violated Regulation 6-A-1, and L. E. Grace shall be restored to the service of the Carrier with seniority and all other rights unimpaired, and paid for all time lost since June 10, 1966.

OPINION OF BOARD: This dispute arose from the dismissal from service of Block Operator M. E. Hohman and Extra Block Operator L. E. Grace on June 10, 1966. Mr. Hohman and Mr. Grace were found guilty of permitting Train No. 54, Engine 5766, at Hunt Interlocking to proceed into block on No. 1 track, Hunt to Jacks, which was out of service and occupied by Maintenance of Way equipment at approximately 12:19 P. M., June 10, 1966.

Train Order No. 9 was telephoned at 6:55 A. M. on June 10, 1966, to Hunt Block Station informing the employees to hold all trains clear on No. 1 track in order to protect Maintenance of Way equipment. Mr. Grace, who received the order by telephone, reversed Lever 21 to block Track No. 1. About 11:30 A. M., because a burro crane was to be moved, trains in the yard were relocated and Lever 21 was placed in a normal position for movement of equipment on Track No. 1. Shortly after 12 o'clock noon, Passenger Train No. 54 came through on restricted Track No. 1 passing Hunt Interlocking. Mr. Hohman noticed the error and stopped the train by radio communications.

Mr. Hohman makes claim that he was improperly dismissed from service because he was not responsible for running the tower. He points out that he was persuaded to work by Mr. Thompson, Division Operator, although he was ill and handicapped as a result of an accident in May while on duty. He states that he requested sick leave, but was asked to remain on the job and was furnished a helper to relieve him of responsibility. He points out that he rectified the error by stopping the train before any damage was done. Mr. Hohman requests restoration to service with compensation for time lost.

Mr. Grace admits that he was responsible for permitting Train No. 54 to proceed into block on No. 1 track between Hunt and Jacks. He does, however, point out that he was a student Block Operator, who was not qualified to work as Block Operator at Hunt interlocking, but only qualified to handle train orders. He argues that he should not be held responsible for an incident while in training. He requests reinstatement and compensation for all time lost.

The record discloses that Mr. Hohman removed the block device on Track No. 1 by placing Lever 21 in a normal position to permit the Maintenance of Way equipment to be moved. He failed to return the lever to a reverse position to carry out the order that all trains were to be held clear of Track No. 1. Furthermore, as an experienced Block Operator, Mr. Hohman had the responsibility of checking the position of the lever or of instructing the Extra Block Operator to do so before permitting him to give a proceed signal to Passenger Train No. 54. His failure to carry out his responsibility may be explained by his illness and his reliance on the Extra Block Operator. He took the position that Mr. Grace was assigned to relieve him during this period of illness, and was primarily responsible for the operation of the tower. However, when he realized the passenger train was passing the tower, he immediately notified the Engineer of Train No. 54 to stop, and thus averted an accident.

In light of these circumstances, we find the penalty of dismissal from service too severe and we restore Mr. Hohman to service without compensation for time lost.

Mr. Grace as an Extra Block Operator with only five months' service was assigned to Hunt Interlocking to assist Mr. Hohman because of the latter's physical condition and to train as a Block Operator. When he received the order to hold all trains clear of Track No. 1, he properly set Lever 21 in reverse. It was not he who moved the lever back to a normal position contrary to the restrictive train order. Because of his lack of experience, he displayed a proceed signal to Train No. 54 without rechecking to see that the lineup of the switch was back to reverse to block Track No. 1. Despite his admission of failure to perform his duty, the primary responsibility rested with Mr. Hohman, who was in charge of the tower and had the obligation to supervise and help him while in training.

Since we find that Mr. Grace was not responsible for the charges of which he was found guilty, we restore him to service and allow compensation for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned on the basis of his assigned working hours for the period 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 Agreement was violated.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1968.