



Award Number 17521

Docket Number TE-16699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, 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:

Block Operator J. E. Peyronel was improperly disciplined when on February 26, 1965 he was charged with failure to comply with the second paragraph, Rule 400N-21, Train BC10-A, Engine 9844, January 31, 1965 at AJ block station.

OPINION OF BOARD: The Claimant is the regularly assigned Block Operator at "AJ" Block and Interlocking Station. On January 31, 1965, 4:10 P.M., Train BC-10-A, Eastbound, stopped at that point and the Engineman leaned out of the cab window and communicated across a distance of approximately twenty-five—whether feet or yards is ambiguous. In the Carrier's submission, the distance separating the Engineman and Claimant is stated as twenty-five feet, however, the question contained in the Investigation Transcript is as follows:

"Q. The distance between the tower and the track where this train was standing is approximately 25 yards, is that about right?

A. It would be a little less than 25 yards."

Nonetheless, the gist of the conversation, as alleged by the Engineman, was to the effect that he had encountered a stop and proceed signal in the vicinity of Springdale, Pa., (Mile Post 60) and a rough spot in the vicinity of Mile Post 51. The Claimant, on the other hand, contends that the Engineman informed him of a stop and proceed signal and a rough spot at Springdale on #1 track. However, no mention was made of a rough spot between Beale and Harris (Mile Post 51). This information was then relayed to the train dispatcher by the Claimant.

At 7:43 P.M., that same day, an Eastbound train on No. 1 track hit a broken rail in the vicinity of Mile Post 51 and derailed sixteen cars and the cabin car.

Thereafter, the Claimant received a five day disciplinary suspension for failure to comply with Rule 400-N-21, paragraph 2, hereinafter quoted:

"They must obey the instructions of the train dispatcher and train director and advise them immediately of any occurrence which may affect proper operation or safety of train movement."

The Carrier concedes that the Engineman was derelict in not reporting his observations to the train dispatcher by means of the train phone. Nevertheless, it insists herein, that the Claimant was informed of the road conditions by the Engineman and failed in his responsibility to communicate it. It further insists that if the Claimant had notified the train dispatcher of the rough spot at Mile Post 51, the derailment would not have occurred.

We find no fault with the Carrier's argument that upon it rests the highest responsibility and the need to exercise the greatest degree of care in order to operate its trains safely. Nonetheless, while we are cognizant of this duty and endorse it wholeheartedly, we are also mindful of our responsibility. Of course, we regret this incident and commiserate with the Carrier. However, in its attempt to foist responsibility upon a miscreant, the Investigation Transcript fails to support, by probative evidence, that the Claimant had any knowledge of the alleged rough spot at Mile Post 51.

We are always reluctant to reverse a disciplinary action meted out to an employee, aware that such is peculiarly within the province of management rights. However, in the absence of clear and convincing proof that the offending employee committed an act which deserved discipline, we are compelled to negate the Carrier's action.

Upon a careful analysis of the record and due reflection, we are constrained to support the Organization's contentions.

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 the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1969.