



Award No. 18083

Docket No. TD-18504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter referred to as "the Carrier") violated the existing schedule Agreement between the parties, Article V thereof in particular, by its action in dismissing Train Dispatcher C. E. Enyart from its service, following formal hearing held February 17, 1969, for alleged rules violations, which hearing failed to establish the alleged violations.

(b) The Carrier shall now be required to reinstate Claimant Enyart with all rights unimpaired, clear his employment record of the charge which provided basis for Carrier's action.

(c) Compensate Claimant for loss of compensation from date of dismissal until restored to service.

(d) The amount of compensation claimed in paragraph (c) supra, shall be subject to the payment of interest thereon at the maximum rate permitted by the statutes of the State of Missouri.

OPINION OF BOARD: Claimant was advised by notice dated February 7, 1969 to report to the office of Superintendent of Transportation on February 11, 1969 at 2:00 P.M. for hearing to develop the facts and determine your responsibility, if any, "in connection with the report that Telegrapher D. R. Bonner at Sherman, Texas, approximately 6:00 A.M., January 10, 1969, advised Dispatcher C. E. Enyart that there was a track indication on Frisco track at approach to South Sherman Junction and that Roadmaster Weise had instructed him to hold No. 39, Engine 25, at Sherman, Texas until track could be inspected for broken rail, and that after this notification Dispatcher Enyart instructed Mr. Bonner to let Train 39, Engine 25, depart Sherman, Texas, which is in violation of rules 'General Notice', 'B', 101 and 986 of the Transportation Department, effective March 1, 1957."

At the outset Carrier raised a procedural defect alleging that the Organization failed to handle this dispute in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes; that the Organization bypassed the Superintendent of Transportation, who issued the discipline, before appealing to the Division Manager.

Examination of the record shows that Carrier waived its right to object to the Organization procedures of appeal followed in this instance. This is clearly seen in the letter of Carrier's Division Manager, H. C. Bitner, dated February 10, 1970, addressed to Carrier's Director of Labor Relations, Mr. T. P. Denton, and marked Carrier's Exhibit E, when Mr. Bitner stated:

"During the conference held in my office commencing 2:00 P. M., Monday, April 14, 1969 with representatives of the American Train Dispatcher's Association at which was discussed the discipline case involving Train Dispatcher C. E. Enyart, the Organization representatives did not protest the untimeliness of the hearing held with Train Dispatcher C. E. Enyart, February 17, 1969.

The only understanding reached in this conference was that I agreed to reinstate Train Dispatcher Enyart with seniority and other contractual rights unimpaired and without pay for time lost, but without prejudice to the right of the Organization to progress claim for pay for time lost to the National Railroad Adjustment Board or other appropriate tribunal if so desired."

Therefore, we have jurisdiction to decide the dispute.

In regard to the merits of the case, the Organization contends that Carrier resorted to unwarranted dismissal of Claimant as a method to compel a reduction in force in violation of the Agreement; that Claimant did not violate any of Carrier's rules and especially those rules cited by Carrier as basis for discipline.

It is undisputed that Claimant did not obey the specific instructions of Roadmaster Weise to hold Train No. 39 at Sherman for a track indication. Claimant attempts to excuse compliance with the Roadmaster's orders on the grounds that Rule 986 gave him the choice of two methods in notifying trains of defective track, namely (1) by train order, or (2) by any other method as necessary, and that Claimant chose method (2) as best under the circumstances because he could notify the location, possible trouble and to instruct the train to ascertain it was safe before passing over the track, and thus Claimant complied with Rule 986.

While Claimant's responsibility was to see to it that there are no unnecessary train delays and while under normal conditions he could select the appropriate method as necessary to insure safety under Rule 986, nevertheless, Claimant was faced with a specific order from a superior officer of Carrier to halt Train No. 39 at Sherman. Permitting an employee to flagrantly refuse to obey an order of a superior officer could lead to chaos and a serious disruption in the operation of a railroad. Failing to follow such order herein subjected Claimant to discipline. Since Claimant was returned to service on April 18, 1969 with all rights unimpaired, restoration to service is moot.

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 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 11th day of September 1970.

DISSENT TO AWARD 18083, DOCKET TD-18504

It can only be hoped that in the railroad industry the train dispatchers do not view this award as a precedent. The majority has said any supervisor can instruct a train dispatcher regarding the movement of trains. When an employe has two options under Carrier's own rules and uses one, then is disciplined for not using the other option, only chaos can result. It is hoped the majority understands what they have tried to accomplish.

G. P. Kasamis
Labor Member