

Award No. 18402
Docket No. TD-18696

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(a) The Chicago and North Western Railway Company (hereinafter "the Carrier") violated the effective Schedule Agreement, Rule 24 thereof in particular, by imposing its arbitrary, unwarranted and harsh disciplinary action of assessing Train Dispatcher D. F. Liesch fifteen (15) days deferred suspension as a result of a hearing held August 12, 1968.

(b) Carrier shall now be required to rescind the action referred to in paragraph (a), clear Train Dispatcher D. F. Liesch's record with respect thereto and compensate him for time attending the hearing.

OPINION OF BOARD: In this discipline case, Carrier raises a procedural defect alleging that the claim should be dismissed for failure of the Organization to file the claim with this Board until more than 15 months had elapsed from the date of denial of the claim by the highest officer of the Carrier designated to handle such matters.

Carrier's contention in this regard is that while Rule 24 of the Agreement does not specify a time period within which time period a claim must be submitted to an outside tribunal such as this Board, nevertheless, inasmuch as Rule 24 (c) provides that appeals must be filed within 15 days from date of decision, indicates that a delay in excess of 15 months in appealing from the decision of the Carrier's highest officer to this Board, is not in compliance with the intent or purpose of the discipline rule; that the Organization is clearly in a position of having abandoned any intent to appeal this claim, is guilty of laches and the claim should therefore be dismissed; that the Railway Labor Act contemplates that the parties should make every reasonable effort to dispose of disputes promptly and this was not done in this instance.

The Organization, in its rebuttal, filed with this Board, points out that the Schedule Agreement contains no time limit in which to process a claim to this Board; that extenuating circumstances delayed the filing of this claim with the Board due to the death of the President of the Organization, to whom the handling of the claim on behalf of the Claimant was originally referred.

While we do not condone an unreasonable delay in progressing a claim to this Board after denial by Carrier's highest officer, we find in this instance that Carrier was not prejudiced by the delay in the late filing to this Board. Further, no specific time limit in regard to the filing of such a claim as is before us is set forth in the rules of the Agreement. Therefore, we hold that Carrier's contention in regard to said procedural defect is without merit and is therefore denied.

The Organization also raises a procedural defect claiming that Claimant was not afforded a fair and impartial hearing because the notice to Claimant to appear at the hearing did not apprise Claimant of the precise charges against him.

This Board in a number of Awards has held that the charge does not need to contain the rules which Claimant allegedly violated (see Award No. 11443) and that the notice is sufficient if the notice is so worded as to fully apprise the recipient of the nature of the offense charged, so that he may become fully prepared to defend himself (see Award No. 11170), and the formation of a charge and the giving of notice thereof need not be in the technical language of a criminal complaint (see Award No. 3270).

As was stated by this Board in Award No. 11443:

"The charge does not need to contain the Rules which Claimant allegedly violated. Awards 7139 (Cluster) and 6171 (Wenke). Claimant knew the nature of the charge. He was not misled nor was he deceived. Awards 5933 (Parker) and 5370 (Elson)."

Further, this Board in Award No. 17163 concluded:

"Second, should the finding against the Claimant be reversed because he was not charged with violating any rules or instructions of the Carrier? We think this cannot be a basis for reversing a finding of the hearing investigation. A railroad employe is held responsible for a standard of care in performing his primary responsibilities. This rule for a non-negligent conduct does not need to be written."

Finding that Claimant was not prejudiced in any manner by the notice given to him in regard to the hearing so as to properly prepare his defense, the contention of the Organization as to said alleged procedural defect is denied.

Concerning the merits, the facts adduced at the hearing show that on August 7, 1968 a motor car operated by Signal Maintainer Emil S. Peterson was struck by train No. 187 at about one post short of Mile Post 8 on the Port Washington territory.

Signal Maintainer Peterson testified that on the day in question he had a line up issued at 5:28 A. M. showing that train No. 187 was not ordered yet; that about 9:45 A. M. he received information that train No. 187 was set back to 12:01 P. M. or 12:00 Noon; that he had his lunch at Green Tree Road from Noon to 1:00 P. M.; that at approximately 1:04 P. M. he called the dispatcher to find out where train No. 187 was; that the dispatcher told him that 187 was not reported out of Butler yet; that he asked for and received information from the dispatcher in regard to train No. 173, which he learned was ordered at around 3:45 P. M.; that he repeated the messages back to the dispatcher and asked if everything else was OK and the dispatcher said as far as he knew as of now it was; that he then set his motor car on the track, proceeded north, and shortly thereafter his motor car was struck by train No. 187.

Telegrapher Clerk, Gerald L. Wachs, testified that at approximately 1:07 P. M. on August 7, 1968, he reported the departure of train No. 187 from Butler Yard to the train dispatcher at Green Gay; that he was not, at any time after train No. 187 had left Butler, asked by either the train dispatcher or anyone else as to where No. 187 was located.

Claimant testified that about 1:05 P. M. on August 7, 1968 he received a report of train No. 187's departure from Butler Yard; that around 1:00 P. M. Signal Maintainer phoned and said he was at Green Tree Road and asked how is 187 and he replied Butler had not reported them out yet and the Maintainer said OK and hung up; that at the time the Signal Maintainer called, he did not know where 187 was located; that he did not recall attempting to obtain the location of train 187 between 12:01 P. M. and the time he received the OS from Butler.

It is the finding of this Board that Carrier failed to prove by competent evidence that Claimant was responsible for the collision between train No. 187 and a motor car operated by a signal maintainer on the date in question.

At the time the signal maintainer called Claimant for information as to the whereabouts of train No. 187, Claimant did not know the location of said train. Carrier failed to prove that Claimant was required to ascertain the train's whereabouts after knowing that said train was ordered out for duty on this date. Claimant had no way of knowing that an emergency existed when informed by the Telegrapher Clerk Wachs that train No. 187 had departed Butler Yard. Claimant learned this after employee Peterson's call. Claimant was not informed that said train No. 187 had departed at 12:45 P. M., thus creating an emergency requiring necessary steps to be taken in an attempt to alleviate same.

Finding Carrier failed to sustain its burden of proving Claimant guilty as charged, we must therefore sustain the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.

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