

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19560
Docket Number TE-19807

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Division, BRAC)
(Norfolk and Western Railway Company
((Involving employees on lines formerly operated by
the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on Norfolk & Western Railway Company (Wabash), T-C 5863, that:

1. Claim of the General Committee that the Carrier violated the terms of the Telegraphers' Agreement, when on December 7, 1971, it dismissed T. H. Grider without just reason or cause; and

2. As a consequence Carrier shall:

- (a) Clear service record of T. H. Grider of the charge and any reference in connection therewith.
- (b) Promptly restore T. H. Grider to duty with seniority, vacation and other rights restored.
- (c) Pay T. H. Grider the amount of wages he would have earned absent this violative act, plus expenses incurred by him.
- (d) Pay T. H. Grider any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Co., under Group Policy GA-23000, and in the event of the death of T. H. Grider, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
- (e) Pay interest at the statutory rate for the state of Missouri, for any amounts due and withheld as a result of the Carrier's action in dismissing claimant.

OPINION OF BOARD: Claimant was employed by the Carrier on April 23, 1969. On November 17, 1971 Claimant was working as a telegrapher-leverman at Forrest, Illinois. Included in his responsibilities was the reading out of tapes from four "hot box" Detector Recorders located in the telegrapher's office. On the date in question, as Train DC-4 passed the first detector it caused a tape indication (8MM over 2MM) to appear in Claimant's office that a certain car might have developed a "hot box", and he immediately stopped the train for a visual inspection. The dispatcher, who is responsible for the control of train movements and is Claimant's superior, instructed Claimant to clear the train after the train crew was unable to find the source of the hot reading.

After 28 miles and the next detector location, the reading was approximately the same and Claimant did not stop the train. At the third location, about 31 miles further along the line, the detector reading was still the same (8MM over 2MM) and again Claimant allowed the train to continue. At the fourth detector point, after another 36 miles, a much higher reading was noted (25MM over 2MM) and Claimant stopped the train. The car in question was set out, the train proceeded and subsequently the car required repairs.

An investigation was held on December 1, 1971 to determine Claimant's responsibility in not stopping the train as described above. On December 7, 1971 he was dismissed for failure to follow instructions concerning action to be taken when abnormal readings are registered on hot box detector recorders.

The Organization contends that the Carrier failed to sustain its burden of proof and hence was not justified in discharging Claimant. Specifically, Petitioner states that there were no rules or instructions in evidence relating to the duty of telegraphers in connection with hot box detectors. Further it is argued that Claimant used common sense in not stopping the train at the 2nd and 3rd detectors since the reading was the same as at the first location where nothing dangerous had been found.

Our study of the investigation indicates that the special instructions relating to the hot box detectors were quoted in detail at the hearing, that Claimant was familiar with these instructions, and further that he had used his own judgment rather than follow the instructions. There is ample evidence, therefore, to support the Carrier's charge against Claimant.

The Carrier is under an extremely heavy burden of responsibility for safe operations; its multiple obligations to the public as well as to its own employees are well known. We said in Award 14066:

"We are aware of the high degree of care under which a Carrier is required to operate concerning matters of safety. In order to exercise this duty, it must insist that its employees faithfully and carefully execute the responsibilities which devolve upon them. It cannot leave anything to chance or permit the slightest neglect."

We have repeatedly held that employees who violate Carrier's safety rules are subject to dismissal (Awards 14865, 10880, 11609 among many others). In the light of the entire record, we will not upset the punishment decided upon by the Carrier and will deny 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.