

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19863
Docket Number TE-20056

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication Division, BRAC)
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company, T-C 5864, that:

1. Carrier acted in an arbitrary and capricious manner and violated the Agreement between the parties when on June 25, 1971, it suspended Dispatcher C. E. Leonard from service pending investigation.
2. Carrier further violated the Agreement between the parties when on Monday, June 28, 1971, it conducted a formal investigation and; 1. failed to state a precise charge in notice to claimant; 2. prejudged the case by removal from service Dispatcher C. E. Leonard pending investigation; 3. failed to state correct date of investigation in letter of discipline to claimant thus rendering discipline imposed null and void; 4. failed to prove the charges; and, 6. assessed discipline on speculative evidence.
3. Carrier further violated the agreement between the parties when on Monday, June 28, 1971, it conducted an investigation and subsequently, without just cause, assessed a deferred suspension of thirty (30) days against Dispatcher C. E. Leonard.
4. Carrier shall now be required to compensate Dispatcher C. E. Leonard for all time lost, eight (8) hours at the Whitethorne District Dispatcher rate of pay, for each date Friday and Monday, June 25 and 28, 1971.
5. In addition to amounts claimed above the Carrier shall pay Dispatcher C. E. Leonard an additional amount of eight (8) per cent per annum, compounded annually on the anniversary of this claim.
6. Carrier shall further be required to remove and expunge the deferred suspension of thirty (30) days from the record of all charges or unfavorable entries.

OPINION OF BOARD: Claimant was working his regular position as Train Dispatcher, Whitethorne District, Radford Division, Roanoke, Virginia, when a train passed a stop and stay signal on his district. Following a hearing on the incident, claimant received a 30-day ~~deferred~~ suspension. He also lost two days work by reason of suspension pending hearing, and attending hearing, but he was restored to service immediately after the hearing. Claimant had an unblemished record of 22 years service prior to this incident.

The Petitioner contends that: 1) the written charge in Carrier's notice of hearing did not "clearly specify the precise charge" against claimant as required by Rule 11 1/2 of the Agreement; 2) the hearing record contains insufficient evidence to support disciplinary action against claimant; and 3) the discipline assessed was too severe. We find no fault with the form of the charge against claimant in the facts of this case, but we shall consider Petitioner's other contentions.

The hearing record shows that Extra 744 West, a local switcher, was operating westward from Roanoke when the incident occurred at Fagg passing siding where some switching work was to be done. Claimant gave the train permission to pass a stop and stay signal at the east end of the Fagg siding, when in fact the extra was at the west end of the siding. Because the engineer thought that such permission applied to a stop and stay signal at the west end of the siding, and because the west end switch of the siding was properly aligned for the movement, the engineer moved his detached diesel units through the west switch of the Fagg siding and out onto the mainline while the controlling signal was in the stop and stay position. There were no opposing trains in the immediate area and the train dispatcher properly reported the incident to his superiors. As regards the reason for the west switch being properly aligned for movement from the siding onto the mainline, even though the dispatcher thought the train was at the east end of the siding, the record shows that "instinct or something" told the dispatcher to align the switch as a precaution against its damage.

The events preceeding the incident began with a discussion between the train dispatcher and the conductor of Extra 744 concerning the switching work to be done at Fagg. The dispatcher's impression from this discussion was that the conductor planned to use only the east end of Fagg siding for the switching operations, but in fact the conductor planned to and did use both the east and west end of the siding for the switching. Subsequent to the discussion, the train arrived at Fagg, moved through the east switch onto the passing siding, and stopped after clearing the house track switch. The diesel units were then detached and moved westward on the passing siding. However, the signal controlling this movement was in stop and stay position and the engineer tried to speak by radio to the dispatcher, but was unable to do so. The brakeman, an employee of about one year's experience, then phoned the dispatcher. From this phone conversation the brakeman received the erroneous impression that he had clearance for movement of the diesel units through the west switch of the siding. The engineer acted on the brakeman's impression and moved the diesels through the west switch, which resulted in improperly passing a stop and stay signal. Testimony on the dispatcher-brakeman conversation was given by the dispatcher, the brakeman and a signal maintainer who overheard the conversation from the dispatcher's office. The signal maintainer's written statement, which was given within an hour after the incident, recounted the dispatcher-brakeman conversation as follows:

"VOICE ON PHONE: 'Whitethorne Dispatcher.'

DISPATCHER LEONARD: 'Whitethorne Dispatchc..'

VOICE ON PHONE: 'I'se want out of this siding.'

DISPATCHER LEONARD: 'East end, right?'

VOICE ON PHONE: 'mumble' (Maintainer Aliff stated he could not understand what the statement by voice on phone was.

DISPATCHER LEONARD: 'You're at the east end of Kumis.'

VOICE ON PHONE: 'No, I'm at the other siding up above there.'

DISPATCHER LEONARD: 'You are at the east end of Fagg and you are in the side track. Can you see the signal that indicates that you have the signal to come out of the side track?'

VOICE ON PHONE: 'The switch has lined to come out.'

DISPATCHER LEONARD: 'Can you see the signal?'

VOICE ON PHONE: 'No, I can't see the signal.'"

It is clear from the foregoing, and the whole record, that the dispatcher and the train crew were not working with the same understanding when the incident occurred. It is also clear that the train dispatcher contributed in some measure to the confusion which led to the incident. Nonetheless, in light of all the facts, we are concerned that claimant's responsibility for the confusion is not clearly established by the hearing record, and that, in any event, the discipline was unduly severe in the total context. The genesis of the confusion was the dispatcher-conductor conversation, concerning the Fagg switching work, from which the dispatcher received the erroneous impression that only the east end of Fagg was to be used for the switching. This erroneous impression was clearly reflected in the dispatcher's statements in his phone conversation with the brakeman; the record shows without contradiction that the dispatcher twice mentioned "east end" to the brakeman, thereby evidencing his belief that the train was at the east end of Fagg. Yet, the brakeman did not give any indication to the dispatcher that his train was in fact at the west end of the siding or otherwise clarify the location of his train. Thus, the brakeman, though on the scene with the train and having knowledge of its actual location, reinforced the dispatcher's erroneous impression that the train was at the east end of Fagg. In this situation, and so far as the hearing record shows, the dispatcher had no way of knowing the diesel units were not at the east switch until his signals in the dispatcher's office showed that the diesel units had passed through the west switch and onto the mainline. We observe that the brakeman's limited experience presumably entered into his failure to clarify the location of his train; however, we believe it would be unsound and unjust to permit one employee's limited experience to result in prejudice to the rights of another employee in respect to discipline.

In view of the foregoing, and in view of claimant's 22 years of unblemished service prior to this discipline, we conclude on the whole record that an official reprimand was warranted but that Carrier acted unreasonably and arbitrarily in assessing the discipline complained of herein. Accordingly, we shall sustain the claim to the extent that the deferred 30-day suspension shall be expunged from claimant's record, and claimant shall be compensated for time lost; however, in view of our conclusion that an official reprimand was warranted, we believe an interest award would not be appropriate.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.