

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20333
Docket Number TD-20301

Joseph Lazar, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(George P. Baker, Richard C. Bond, and Jervis Langdon,
(Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

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

CLAIM #1

(a) The Penn Central Transportation Company (hereinafter referred to as "the Carrier") violated the effective Schedule Agreement between the former New York Central Railroad, and Train Dispatchers Represented by the American Train Dispatchers Association, Article 9 thereof in particular, by action in assessing thirty (30) days' actual suspension against Claimant Train Dispatcher C. P. McNamara following formal investigation conducted April 5, 1972:

(b) Because of said violation, the Carrier shall now be required to remove said discipline from Claimant McNamara's personal record and compensate him for all time lost.

CLAIM #2

(a) The Penn Central Transportation Company (hereinafter referred to as "The Carrier") violated the effective Schedule Agreement between the former New York Central Railroad, and Train Dispatchers Represented by the American Train Dispatchers Association, Article 9 thereof in particular, by its disciplinary action of disqualifying Claimant C. P. McNamara in all capacities as Train Dispatcher following formal hearing conducted April 25, 1972.

(b) Because of said violation, the Carrier shall now be required to remove said discipline from Claimant McNamara's personal record, restore him to his train dispatcher position, with all rights unimpaired and compensate him for all time lost from said position.

OPINION OF BOARD: This docket includes two disputes which were separately handled on the property. Our views, in disposing of the claims, require discussion of each claim.

Claim #1

The American Train Dispatchers Association claims that The Penn Central Transportation Company violated Article 9 of the effective Agreement in assessing thirty days' actual suspension against Claimant following formal investigation conducted April 5, 1972, and seeks removal of said discipline from Claimant's personal record and compensation for all time lost.

The Carrier's Director-Labor Relations in letter of June 19, 1972 to the Acting General Chairman denied the Organization's appeal in System Docket No. GPK-4 concerning the instant claim, stating in part:

"We conclude that the testimony given at the hearing definitely establishes that Mr. McNamara was remiss in his duties as train dispatcher on the date in question. The record shows that there was a lap in authority resulting in opposing train movements within the same block when Work Train Extra 8887 was permitted by Mr. McNamara to move north arriving at Kenton at 9:22 A.M., and occupy the block at Kenton until 11:53 A.M., and Train TI-1 was permitted by Mr. McNamara to move south from the Eastern Branch to the Western Branch through Kenton at 10:20 A.M."****(Exhibit TD-7 page 2).

The transcript of investigation shows the following questions and answers, Claimant answering:

- "Q. Did you authorize the movement of train TI-1 south from Eastern Br. connection at Kenton?
A. Yes.
- Q. Approx. what time?
A. Approx. 10 AM.
- Q. At that time were blocking devices applied at both CP 70 and 73?
A. Yes.
- Q. Was permission ever granted to remove these blocking devices?
A. No, sir.
- Q. Do you show the wk exa 8887 north north of the Kenton transfer switch prior to making this southward movement?
A. Yes, sir.

"Q. I refer you to the train sheet for wk exa 8887 north and the only entry I see at Kenton is arrival time at 9:22 is this correct?

A. No, sir, I believe this is the time by at Kenton.

Q. Is it not the practice of all the train disprs, including yourself, that when both an arrival and departure time at a given station is entered, that they are entered at the bottom and top of the square whereas if it were a passing time it would fill the square?

A. Well, yes, but as I say I believe this is the passing time at Kenton. At least that was the way it was reported to me. I didn't have an arrival time given to me.

Q. But the train sheet does not reflect this does it?

A. To my way of handwriting it does.

Q. I refer you to the entry of NT-7 north at Dunbridge where you show at the bottom of the square 11:10 and the top of the square 11:34, what do these times reflect?

Mr. Collins objects. It is my understanding that we were investigating wk exa 8887, it appears we have gone very far afield and we seem to be getting farther afield as the time goes on.

Q. Mr. Collins your objection is so noted. Mr. McNamara, will you please answer the question?

A. Yes, sir that reflects the time that NT-7 entered the siding at Dunkirk and departed."

We have carefully considered the Claimant's statements included in the transcript of investigation, and the arguments of the Organization concerning the responsibility of the Carrier to furnish train dispatchers proper tools, including a properly delineated train sheet for the recording of train movements. Although the contentions of the Organization are persuasive, we are nevertheless of the opinion that the transcript of investigation contains clear evidence of the 9:22 A.M. entry on the train sheet. We cannot say that the Carrier's interpretation of this item as entered is unreasonable or arbitrary. In the absence of prejudice or discrimination against Claimant, and we find none, we are unwilling to substitute our judgment for that of the responsible officials of the Carrier.

Since the basis for the Carrier's denial of Claimant's appeal on the property was basically the factor just discussed, and we support the Carrier's conclusion, it is not necessary to deal with the conflicting testimony involving the Conductor on Work Extra 8887 pertaining to work and time limits or passing stop signal (CP-70).

Claim #2

The American Train Dispatchers Association claims that the Penn Central Transportation Company violated Article 9 of the effective Agreement by its disciplinary action of disqualifying Claimant C. P. McNamara in all capacities as train dispatcher following formal hearing conducted April 25, 1972. The Organization's claim is that "Because of said violation, the Carrier shall now be required to remove said discipline from Claimant McNamara's personal record, and restore him to his train dispatcher position, with all rights unimpaired." The Organization has withdrawn its claim for compensation for all time lost, since this was not handled on the property and was improperly included in the submission.

The evidence is absolutely clear that Claimant duplicated three train order numbers, two of which were running orders, in violation of Rule 203, reading: "Train orders must be numbered consecutively each day, beginning at midnight." Claimant admitted to this at the investigation, and the record includes copies of the duplications.

The Carrier, in denying Claimant's appeal, in letter of June 17, 1972, states in part:

"...Mr. McNamara has admitted guilt to all of the material elements of the charge against him. Therefore, the only question is whether or not the disqualification of Mr. McNamara was too severe for the offense of which he was properly chargeable...."

The duplication of train order numbers has the potentiality of causing death, injuries, loss of property and incalculable damage. That a disaster does not occur, as in the instant case, does not lessen the gravity of the duplication. The violation subjects the violator in a proper case to discipline that may result in his discharge or disqualification from service. See Award No. 13648.

The question here presented is: not whether the Carrier has the right to disqualify Claimant from service in all capacities as train dispatcher. The Carrier does have this right in view of the grave violation committed. We are concerned, as stated by the Carrier in its letter of June 17, with the question of whether the particular facts and circumstances in this unique case concerning Mr. McNamara may operate to mitigate the severity of the Carrier's decision of disqualification.

We note the following: (1) Claimant has had 25 years of service with the Company; (2) Claimant has worked in the capacity of train dispatcher since Feb. 4, 1953; (3) Except for a three day deferred discipline in 1971 and Claim #1 in this docket, Claimant has a clean record; (4) Claimant is 49 years of age; and (5) Claimant openly admits to his violation and recognizes its seriousness.

It is a truism that years of service by an employee do not give an employee a license to violate established rules. It is also true, as a general observation, that years of service by an employee often evidence an employee who is faithful and loyal to his company, who is well-disciplined and takes his work seriously, who is knowledgeable and experienced in his work, who identifies with the company, is dependable, and is the hard-core or bed-rock that makes the company go. Of course, this general observation does not apply in all cases, and this is why each disciplinary case must be judged on its own particular merits and why years of service, standing alone, do not give an employee a license to violate established rules.

This Board is of the opinion, in the particular circumstances of this particular case, that mitigating circumstances here warrant removing the disqualification of Claimant as train dispatcher.

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

In Claim #1: that the Agreement was not violated; in Claim #2, that the Agreement was violated.

A W A R D

Claim #1 is denied. Claim #2 is sustained, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

C. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.