NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20565
THIRD DIVISION Docket Number TD-20402

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Chicago and North Western Transportation Company

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

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier"), violated (1) the effective schedule Agreement between the parties, Rules 24(a) and 24(b) thereof in particular, and (2) Section 2, Sixth of the Railway Labor Act, as amended, by its action in:

(1) assessing fifteen (15) days' actual suspension against Claimant Train Dispatcher K. D. Shreffler following formal hearing conducted January 18, 1973, which action was then used as sub-basis for requiring him to serve a separate fifteen (15) days' suspension previously assessed and deferred in connection with an earlier investigation, and

(2) assessing Claimant Train Dispatcher R. E. Rush fifteen (15) days' deferred suspension following formal investigation held on January 18, 1973, and

(3) failing to specify time and place for conference within ten (10) days following receipt of request from the Employes, and to hold such conference within twenty (20) days of receipt of said request.

(b) Because of said violations, the Carrier shall now be required to:

(1) clear Claimants K. D. Shreffler and R. E. Rush's respective personal records of the fifteen (15) days' suspension assessed following the January 18, 1973 hearing referred to in paragraphs (a) (1) and (a) (2) above, and

(2) compensate Claimant K. D. Shreffler for all time lost as a result of the discipline assessed following the January 18, 1973 hearing referred to in paragraph (a) (1) above.

OPINION OF BOARD: The Claimants were disciplined by suspension after hearing, and findings of guilt, on the charge that they failed to take prompt action to stop for inspection a train which was believed to have derailed and rerailed itself on the Illinois Division, and which was ultimately stopped for inspection on the Iowa Division. The Claimants are train dispatchers on the Illinois Division.

As the basis for their protest of the discipline, the Employees make a four-part due process argument and in addition argue that the hearing evidence does not support the discipline. Each party asserts that the other party failed to follow applicable procedures concerning a conference on the property; in this connection the Employees ask that Carrier be found in violation of the Railway Labor Act while the Carrier asks that the claim be dismissed for not having been handled in the usual manner on the property.

The record contains no due process deficiencies and thus there is no basis for sustaining the Employees' objections on these grounds. The parties' contentions on the conference issue began with the General Chairman's request for a conference in his March 7, 1973 letter to the Director of Labor Relations. There was no response to this request. Then, under date of April 19, 1973, the General Chairman stated that, because the ten days specified for setting and the twenty days for the holding of a conference had expired, the Carrier's silence was taken as denial of both the appeal and request for conference and that the claim was being referred to the Employees' highest officer for further handling as provided in the Railway Labor Act. (The ten and twenty day time limits referred to in this letter were based on the provisions of the Railway Labor Act, Title 1, Section 2, Sixth.) On April 25, 1973, the Employees submitted the dispute to this Board by filing the required Letter of Intent. Thereafter, under date of April 30, 1973, the Director of Labor Relations formally denied the appeal and suggested a conference on May 4, 1973. A conference was actually held on May 7, 1973, and resulted in denial of the appeal, as is confirmed by the May 18, 1973 letter of the Director of Labor Relations. The record shows that the parties were at cross-purposes in regard to how and when a conference should come about, but it serves no useful purpose to delve into the details of their differences. Suffice it to say that this Board has no jurisdiction to consider the Employees' contention that the Carrier violated the Railway Labor Act, Award No. 19950; and since a conference was held shortly after the Employees' Letter of Intent was filed with this Board, there is no merit in the Carrier's contention that the claim should be dismissed, Award No. 19034.

We come now to the merits. The Carrier's charge that the Claimants failed to take prompt and proper action after receiving information about a derailment was based on Rule 102 (a) of the Consolidated Code of Operating Rules, reading:

"When there has been a derailment, after equipment has been rerailed it must be known by inspection of track and equipment that it is safe for the train to proceed."

The hearing record shows that shortly after 3:00 P.M. on January 5, 1973, a Section Foreman observed track damage at AE Interlocking at Ashton, which damage was not present during his earlier inspection of the same area at 10:30 A.M. that day. The nature of the damage was such that the Foreman inferentially concluded that a derailment-rerailment of a train had occurred without the train having stopped; at about 3:15 P.M., he phoned Claimant Train Dispatcher Shreffler about the matter and they concluded that the train involved was Train No. 141. The Section Foreman asked Claimant Shreffler to have the train stopped and inspected; Claimant then called the Second Street Office, Clinton, Iowa, from 3:15 to 3:30 P.M., without getting any answer from the Clinton end. The Claimant indicated, however, that it was common to have difficulty in reaching the Second Street Office, as it is a very busy office, and that he expected to receive a call from Second Street as such happened almost routinely every day at about 3:20 to 3:25 P.M. The Claimant said the most important step that he could have taken was to have notified the Chief Dispatcher, but the Chief was not present at the time. The Claimant conceded that, in retrospect, he could have tried to phone the Iowa Division Chief Train Dispatcher at Boone and that "looking at it today I would say another route possibly should have been taken." The Claimant never conveyed the information to Clinton or elsewhere, so when the shift changed at 3:30 P.M., he gave the information to his relief, Claimant Train Dispatcher Rush. Claimant Rush said that he, too, phoned Clinton but got no answer. He said he thought he rang Clinton two or three times, but was not positive. He tried once to get the attention of the Assistant Chief Train Dispatcher to tell him about the derailment, but the Assistant Chief was busy on the phone and could not be interrupted. At about 4:10 P.M. the Assistant Chief learned about the derailment, apparently through a phone call from the Roadmaster; he asked Claimant Rush where the derailment had occurred, and appears to have made further phone calls to obtain information. At 4:20 or 4:25 P.M. he told Claimant Rush to contact Clinton right away. The Claimant's first effort to reach Clinton yielded a busy signal, but he got through on the second call; as a result, Train No. 141 was stopped and inspected at Beverly, Iowa, where two cars showing evidence of derailment were set out. The record showed that Train No. 141 had left the Illinois Division when the Section Foreman reported the evidence of derailment, and that the train had received four running inspections, including a 4 to 5 MPH "roll-by" inspection by carmen, before the Claimants were advised of the derailment.

In reviewing the foregoing, and the whole record, we find no significant disagreement of fact. It appears that the Carrier determined that there was no justification for the delay of more than one hour

between the receipt of notice of derailment and the stationary inspection of Train No. 141 and, in connection therewith, the Carrier further determined that the Claimants contributed to such delay in a manner which warranted discipline. Contrarily, the Employees contend that the facts, when given proper perspective, show that the Claimants did not fail to take prompt and proper action and that their immediate and continuing efforts to contact the Iowa Division constituted adequate compliance with Rule 102 (a). The Employees specifically state that, since four running inspections of Train No. 141 had been made before the Claimants learned about the derailment, Rule 102 (a) would not necessarily dictate that the train be stopped for a fifth inspection; that the Claimants' knowledge of these inspections eliminated the need for "general alarm" type actions on their part; that the Chief Train Dispatcher and the Assistant Chief had a role in the delay in inspecting the train in that, although normal procedure for contacting adjoining Divisions is through the Chief or the Assistant Chief on duty, the Chief was absent when Claimant Shreffler received the report and the Assistant Chief was preoccupied when Claimant Rush tried to give him the report; and that the ten minute delay attributable to the Assistant Chief's consultations with other officials before deciding to ring Clinton "right away", shows that the situation was not so critical as to warrant greater efforts than the Claimants made. These contentions by the Employees obviously spring from their interpretation of an undisputed set of facts, and we have no doubt that the instant record lends itself to such interpretation. But neither do we doubt that the record lends itself to the different interpretation which the Carrier has reached. Consequently, at the most, the Employees' contentions show that the record presents competitive conclusions on which reasonable minds might differ; however, it is well settled that the persuasive quality of such conclusions is not a proper subject of Board inquiry in determining whether a disciplinary action shall be modified or vacated. Our subject of inquiry concerns the underlying basis of the conclusion ultimately reached, with regard to whether such basis is so unreasonable and unsupported by the evidence as to be arbitrary and capricious. Under these criteria, and on the whole record, we must conclude that the Carrier's disciplinary action is supported by substantial evidence of record and that such action cannot be said to be arbitrary or capricious. We shall deny the claims.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.