NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22493
Docket Number TD-22436

THIRD DIVISION

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(The Chesapeake and Ohio Railway Company

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

(a) The Chesapeake and Ohio Railway Company (hereinafter referred to as "the Carrier"), violated the currently effective schedule Agreement between the parties, Rule 8(a) thereof in particular, by its arbitrary, capricious, and unreasonable disciplinary action in assessing fifteen (15) calendar days actual suspension against Claimant Trick Train Dispatcher E. R. Craycraft following formal investigation (Board of Inquiry No. 6545) conducted March 29 and April 5, 1977.

(b) Because of this flagrant violation, the Carrier shall now be required to clear Claimant's personal record of the charges involved in the investigation of March 29 and April 5, 1977 and compensate Train Dispatcher Craycraft at the appropriate punitive rate for attending Board of Inquiry on March 29 and April 5, 1977 at the Railroad Y.M.C.A., Russell, Kentucky, and proper pro rata rate for all loss of time and expenses in connection therewith.

OPINION OF BOARD: Claimant was instructed to attend an investigation concerning asserted "...irregularities and failure to properly handle and execute train orders relating to movement of extra 7579 East over No. 2 Main Track between DG Cabin and Riverton, which had been taken out of service by Train Order 802, March 4, 1977."

Subsequent to the investigation, Carrier notified Claimant that he was "...at fault for failure to properly annul train order No. 802 as required by the second paragraph of Rule 909 and for failure to have orders ready when needed as required by Rule 902." Claimant was assessed a fifteen (15) calendar day suspension.

Pertinent rules state:

"902. They (train dispatchers) must supervise the movement of trains, anticipating the need for train orders and have them ready when needed, but must not issue orders an unnecessarily long time before they are needed nor at points distant from where they are to be executed, if it can be avoided."

"909. They must prevent the delivery of unnecessary orders to a train by annulling such orders after they have served their purpose, and must not annul an order to a train or engine, unless such train or engine has received copies of the order annulled.

If an order to be annulled has been delivered, and is still in effect, the annulling order should be addressed to those who received copies of the order being annulled."

Train Order No. 802 turned over No. 2 Track between DG Cabin and Riverton to maintenance of way forces. Extra 7579 East (Train 190) received Train Order 802. At 3:47 p.m., the maintenance of way Foreman released No. 2 Track for use by trains. Claimant was so notified, and he annulled the Train Order to the operators at RJ Cabin, HX Cabin and CS Cabin by Order 813. The order was not addressed to Extra 7579 (because it referred to other orders, as well).

The train did not stop at DG Cabin, so that it was not aware of the annulment; but nonetheless, it occupied No. 2 Track in violation of Order No. 802.

Claimant asserts that when he was notified that the train was "on the approach", he advised the Operator at RJ Cabin, "Put him up No. 3 track - Yellow East Copy 3." But, he received no further response from the Operator due to a failure of the ringing selector.

Claimant asserts that the charge was not specific and that there was a variance between the notice of charge and the notice of discipline. Both parties have cited Awards in support of their positions in this regard.

We cannot agree that the charge was not specific. In our view, it precisely set forth an allegation to this, and other, employes concerning a movement over Track No. 2 by a specific train on a specific date. But, the specific nature of the charge gives us considerable difficulty as it relates to the assertion that the finding of guilt is at variance with the allegation. Surely, in each such case, a definitive ruling may be made only with reference to the particular facts of record. In this case, we have repeatedly reviewed the charge, and can only conclude that it spoke in terms of the improper movement over Track No. 2. Whether or not this Claimant's actions constituted a violation of Rules 902 and 909 is quite another matter having nothing to do with the allegation that the crew proceeded against Train Order No. 802, which Carrier insists was still operative as far as this crew was concerned. Surely, this employe's actions could have been scrutinized concerning the cited rules, but not when the charge dealt with a different topic.

In this regard, Award 16610 is pertinent to our Award. Even Award 3270, cited by Carrier, is pertinent because Carrier cites it as requiring a "relationship" between the charge and the asserted dereliction.

Finally, we invite the parties' attention to our recent Fourth Division Award No. 3678.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.