

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22549  
Docket Number CL-22213

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers  
( Express and Station Employees  
(  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8419) that:

(1) Carrier violated the Agreement between the parties, when on March 27, 1975, it imposed discipline of 10 days' suspension from service upon Operator C. R. Callahan as a result of an investigation held on March 13, 1975, which is contrary to justice and right, and

(2) Carrier shall be required to clear the service record of Operator C. R. Callahan and compensate him for all wage losses suffered during the 10-day suspension period, from March 31, 1975 to April 10, 1975.

OPINION OF BOARD: This case is concerned with the erroneous routing of a train at a certain trackage area in Ohio shortly before 3 AM on March 12, 1975. The error was discovered almost instantaneously; the train was backed-up; and it thereupon made the proper cross-over and proceeded on the correct tracks. The resulting delay was of about 10-minute duration.

The claimant was the Block Operator (at NY Tower, East Columbus, Ohio) who was admittedly responsible for routing the train contrary to the explicit directions contained in the train order. He was an employe with an excellent record and of about nine years of service. Following investigation, he was given a 10-day suspension (which he served as shown in the Statement of Claim). The Organization is here appealing the suspension, essentially contending: 1) that the charges against the claimant were lacking in requisite precision; 2) that the penalty, in the light of the incident's harmless consequences and in the light of the claimant's superior past record, was unduly harsh.

Clearly owing to the claimant's utter straightforwardness, the investigation in this instance was of the briefest sort. Yet, the record made of it is so fully descriptive of the case and, we think, so

fully disposes of the first of the Organization's contentions, that we will quote the investigation transcript in its entirety:

"Q. Mr. Callahan, under date of March 12, 1975, the following notice was sent to you: 'Please arrange to attend investigation in B&O Trainmaster's Office, Newark, Ohio, at 2:00 p.m. Thursday March 13, 1975, to determine your responsibility, if any, in connection with delay of approximately 10 minutes to P.C. Train No. 31, engine 593, at Port Columbus at approximately 2:55 a.m. March 12, 1975. Arrange for representative and/or witnesses if desired.' Were you properly notified of these charges?

A. Yes.

Q. Do you desire representation?

A. No.

Q. Do you desire witnesses?

A. No.

Q. Are you ready to proceed?

A. Yes.

Q. Mr. Callahan, what was your assignment on the date and time in question?

A. I was working 3rd trick Operator at NY Tower, East Columbus.

Q. Mr. Callahan, please describe in detail all that you know regarding the delay to train No. 31, engine 593, at Port Columbus on the morning of March 12th?

A. When No. 31 went by Summit, I lined him up to cross over from 2 to 1 track at Port Columbus. When he had crossed over, he notified the Operator at Alum Creek that his orders read to East Columbus, not Port Columbus. I then backed him up, brought him down to East Columbus and crossed him over there.

"Q. Train Order No. 205 dated March 12, 1975, addressed to the Operator at East Columbus reads as follows: 'No. 31, engine 593, and Extra PC 3131 West have right over opposing trains on #2 track Summit to East Columbus, signed RHM'. And this train order shows as being repeated by Operator Callahan and made complete at 2:25 a.m. Can you verify this as correct?

A. Yes.

Q. Mr. Callahan, why then did you line No. 31 to cross over from #2 track to #1 track at Port Columbus?

A. Due to the fact that I had been crossing trains over all night on this move at Port Columbus account #1 track out of service between Summit and Port Columbus, I crossed No. 31 over the same way. This was in error due to train order reading Summit to East Columbus.

Q. Are you familiar with and do you understand in Penn Central Rules for Conducting Transportation that part of Train Order Form D-R reading: 'Under these orders the designated train must use the track specified between the points named'?

A. Yes.

Q. Are you familiar with and do you understand that part of train order form J reading: 'Approved blocking devices must be applied to switch or signal levers governing all routes to track affected' and Rule 617 reading: 'Operating levers must immediately be blocked with approved blocking devices whenever the operation of the lever is restricted'?

A. Yes, I am.

"Q. Since you have already stated that you lined No. 31 to cross over at Port Columbus in error, instead of at East Columbus as the train order specified, did you comply with these rules in this instance?

A. No.

Q. Are you familiar with and do you understand that part of Rule 400 N-11 reading: 'They (Operators) are responsible for the delivery of train orders and messages to the persons addressed, arranging the use of blocks, tracks, interlocking switches, and signals and prompt movement of trains in accordance with the rules, train orders and special instructions'?

A. Yes.

Q. Did you comply with this rule in this instance?

A. No, but it was not intentional. It was an error on my part.

Q. Do you accept responsibility for the delay of approximately 10 minutes to Penn Central train No. 31 in this instance?

A. Yes.

Q. Mr. Callahan, are you satisfied that this has been a fair and impartial investigation and conducted in accordance with agreement rules?

A. Yes.

Q. Is there any additional evidence which you desire to present in this case?

A. No."

We do not see how, on this record, we can properly sustain the Union's first contention. It is true that the directive to the claimant to attend the investigation is couched in terms of ascertaining whether the claimant should be held responsible for the incident and that the directive was subsequently used as the basis for the suspension. But there cannot

possibly be any question that the claimant was of complete understanding as to the offense Management considered him guilty of when it suspended him. To view the suspension as defective for lack of charge precision would be, not to hold due-process concerns, but to insist on form without regard for substance.

The real question in the case concerns the severity of the discipline. We have nothing but respect for the integrity with which the claimant conducted himself in the investigation. And we have not lost sight either of the fact of his excellent record or of the fact that his mistake was quickly corrected and ended up being essentially harmless. But we think the controlling considerations are that the claimant's position is one of high responsibility and that the mistake which the claimant made, both in that light and in the light of its potentially disastrous consequences, must be viewed as intolerable carelessness. It is the sort of mistake as to which the discharge penalty is by no means unheard-of. We cannot properly declare the 10-day suspension to be excessive.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.