

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23132
Docket Number CL-22807

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(Southern Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the
Brotherhood (GL-8720) that:

Carrier violated the Agreement when it unjustly suspended Mr. J. G. Starr, Clerk-Operator, Macon, Georgia, from the service of the company, commencing July 16, 1976, and ending August 14, 1976, a period of 22 work days.

For this violation, the Carrier shall now compensate Claimant Starr, Clerk-Operator, Macon, Georgia, by paying him for all time lost as a result of this unjust discipline.

OPINION OF BOARD:

Claimant, J. G. Starr, after investigation, was suspended from service from July 16th, 1976, through August 14th, 1976. At the time of this dispute, Claimant was a Clerk-Operator in Macon, Georgia. The suspension was issued for Claimant's negligent performance of his Clerk-Operator duties on June 22nd, 1976.

On June 22nd, 1976, Train Dispatcher, J. D. Fields, issued Train Order No. 33. The order was issued by telephone to Claimant and Agent-Operator, Eloise Keiser, at Conley, Georgia. It is undisputed that both Keiser and Claimant repeated the order and that no exception was taken to the repetition by Keiser, Fields or Claimant.

The dispute arises over which of two trains, number 124 or 143, should take the siding at Juliette, Georgia. Fields testified that the order he issued stated that Train No. 124 should take the siding. The dispatcher's book corroborated Field's testimony. Keiser stated that she heard Fields state that Train No. 124 should take the siding. She copied the order indicating that Train No. 124 should take the siding.

The order copied by Claimant at Macon, Georgia differed from the order copied by Keiser and the order in the dispatcher's book. It indicated that Train No. 143 should take the siding. Claimant testified that he wrote that order. He stated that, "I believe I actually heard what I put down".

On June 22nd, 1976, Train No. 124 was traveling north on the main line between Macon and Atlanta. Train No. 124 was operating on the authority of Train Order No. 33 which had been issued to it at Macon. When Train No. 124 arrived at Juliette, the crew held the main line as its copy of Train Order No. 33 indicated that Train No. 143 would take the siding. Train No. 143 arrived expecting to find Train No. 124 on the siding as stated in Train Order No. 33 issued to the crew at Conley, Georgia.

The train crews compared orders and a crew member of Train No. 124 called the dispatcher for directions. The dispatcher changed the order and had Train No. 143 go first on request of the crews.

Trainmaster E. G. Tuenge discovered that the order obtained from Train No. 143 coincided with the order as written in the dispatcher's book. Tuenge also discovered that the order held by Train No. 124 did not concur with the order written in the dispatcher's book.

Fields, Keiser and Claimant were all cited to an investigation by Superintendent W. M. Westerman. The letter stated:

"The purpose of this investigation is to develop facts and place responsibility, if any, in connection with discrepancy in issuing and/or copying Train Order No. 33 dated June 22nd, 1976."

The suspension of Claimant resulted from this investigation.

The Organization contends that Claimant was improperly disciplined. It asserts that Claimant wrote down the orders as he heard them. Claimant then repeated these orders as he had written them and neither Fields or Keiser took exception to Claimant's repetition of this order. In the Organization's view, the problem that arose is due to the fact that Keiser and Fields were careless in performing their duties because they did not notice the problem with the order when Claimant repeated.

The Carrier, on the other hand, argues that the discipline imposed is appropriate. It asserts that Claimant's error was serious and could have resulted in serious consequences had the crews not reacted quickly enough to avoid a collision.

An analysis of the transcript leaves little doubt that Claimant is guilty as charged. Clearly, he is responsible for the incorrect order that was given to Train No. 124. As between Fields, Keiser and Claimant, Claimant must be held accountable.

While we are cognizant of the fact that there is a high level of noise in the offices and that there are sometimes interruptions on the telephone line, we are nevertheless persuaded that Claimant should have properly heard the order and should have recorded the order properly. After all, the evidence established that Keiser, who was similarly situated to Claimant, heard the order and recorded it properly.

Moreover, the fact that neither Fields or Keiser took exception to the way in which Claimant repeated the order, does not immunize Claimant. On the contrary, given the testimonies of Keiser and Fields, it is probable that Claimant repeated the order properly but copied it incorrectly.

In any case, we are convinced that Claimant is responsible for the discrepancy in handling the order. Claimant's action subjects him to appropriate disciplinary action.

The final question that remains is the appropriate discipline. This Board has repeatedly determined that it will not substitute its judgment for that of Carrier's in meting out discipline. However, when the discipline is arbitrary, capricious or unreasonable, we will set it aside.

Here, given all of the surrounding circumstances, and the fact that Claimant in his over 25 years of service has never been disciplined or cited for investigation, we are convinced that a 30 day suspension is excessive. Instead, we believe that a Letter of Reprimand should be issued to Claimant for mishandling the order. This will have the desired effect of assuring that Claimant understands the importance of properly handling orders and placing Claimant on notice of the potential disciplinary consequences for future improper action.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That the Discipline was Excessive.

A W A R D

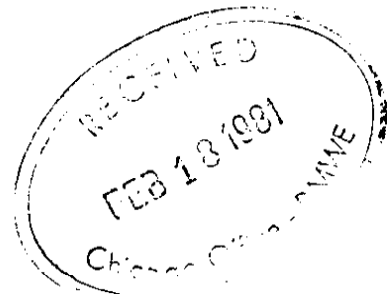
Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.



DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 23132, DOCKET NO. CL-22807
(Referee Scheinman)

Award 23132 finds correctly:

"An analysis of the transcript leaves little doubt that Claimant is guilty as charged. Clearly he is responsible for the incorrect order that was given to Train No. 124. As between Fields, Keiser and Claimant, Claimant must be held accountable."

"Moreover, the fact that neither Fields or Keiser took exception to the way in which Claimant repeated the order, does not immunize Claimant. On the contrary, given the testimonies of Keiser and Fields, it is probable that Claimant repeated the order properly but copied it incorrectly."

"In any case, we are convinced that Claimant is responsible for the discrepancy in handling the order. Claimant's action subjects him to appropriate disciplinary action."

Upon reaching the foregoing conclusions the case is closed, right? Wrong.

This "Opinion of Board" continues:

"The final question that remains is the appropriate discipline. This Board has repeatedly determined that it will not substitute its judgment for that of Carrier's in meting out discipline. However, when the discipline is arbitrary, capricious or unreasonable, we will set it aside."

"Here, given all the surrounding circumstances, and the fact that Claimant in his over 25 years of service has never been disciplined or cited for investigation, we are convinced that a 30 day suspension is excessive. Instead, we believe that a Letter of Reprimand should be issued to Claimant for mis-handling the Order. This will have the desired effects of

assuring that Claimant understands the importance of properly handling orders and placing Claimant on notice of the potential disciplinary consequences for future improper action."

Here, an employee is found responsible for incorrectly copying a train order which could have caused a collision between two trains. In fact, it is stated in the record that the train crews of Trains 124 and 143 acted quickly enough to avert a collision. Collisions can, and do, result in personal injury, death, multi-dollar equipment and merchandise damage, all of which were potentially possible in this incident.

Proper handling of train orders is extremely important for the safe movement of trains. Mishandling of train orders is a most serious offense and could cause a serious accident. Because of the seriousness of this offense, this Carrier could not be considered to have been arbitrary, capricious or unreasonable when, following proven responsibility, Mr. Starr was disciplined in the amount of a thirty (30) day suspension from service. Yet, in these circumstances, in its "Opinion Of Board" it is determined that a thirty (30) day suspension from service was "excessive."

How could this Board determine that: "Claimant in his over 25 years of service has never been disciplined or cited for investigation, we are convinced that a 30 day suspension is excessive."

The error here is of such grave import that once responsibility of an

employee is established the seriousness of incidents of this nature usually requires dismissal of the employee found responsible, and Mr. Starr was found responsible in this case.

The discipline assessed in this case was levied by this Carrier only after serious consideration was given to Mr. Starr's record of twenty-five (25) years of service during which he had not been disciplined or cited for investigation. Without that unblemished record Mr. Starr would have been given a more drastic and severe amount of discipline. The amount of discipline issued obviously was tempered by Mr. Starr's prior record. For this Board to further reduce the discipline is palpably erroneous.

This Board cannot substitute its judgment for that of the Carrier in imposing discipline when a finding of violation is based on substantial evidence where it is not shown that the Carrier acted in an unreasonable, arbitrary or discriminating manner amounting to abuse of discretion.

This Carrier cannot rightfully be accused of abuse of discretion when Mr. Starr was assessed a very minimal thirty (30) day suspension.

As stated in this Division Award 18036: "Long years of good and efficient service may be mitigating circumstances only when there is doubtful issue of guilt and when the penalty is too severe for the committed offense."

Neither of these apply in this case.

Awards of this division - 11769, 13704 state in pertinent part: "Years of

service do not give an employee a license to violate established rules for personal safety, or the safety of others."

As so aptly stated in Award 16005 of this Division: "Moreover, Carrier already has considered mitigating circumstances, such as Claimant's 22 years of service with Carrier."

Third Division Award 16239: "It appears that the Carrier, in consideration of the Claimant's relative inexperience, reduced the discipline imposed from dismissal to time lost."

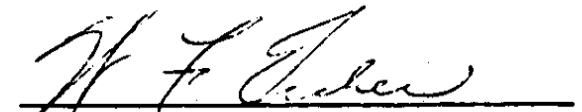
Furthermore, as stated in this Division Award 11803: "It is a well established principle of this Division 'that a disciplinary action will not be set aside unless the Carrier was vindictive, arbitrary or acted in bad faith'. It is also the position of this Board that we cannot substitute our judgment for the Carrier. Awards 11017, 11324, 11531 (Dolnick), 10642 (La Belle), 10595 and 10596 (Hall) among many others."

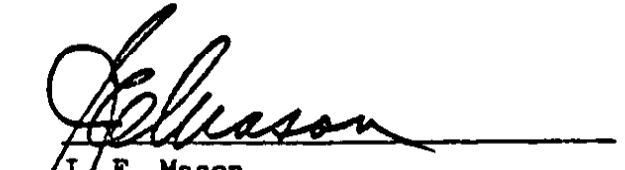
Here, this Board obviously substituted its judgment for that of the Carrier when it decided that the discipline assessed by the Carrier was excessive.

This Board did not have that right.

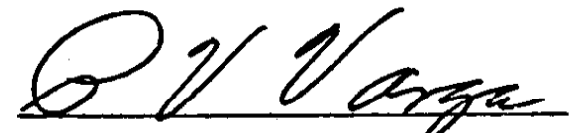
Hence this dissent.


P. E. La Cosse


W. F. Euker


J. E. Mason


J. R. O'Connell


P. V. Varga