

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23495
Docket Number TD-23028

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

{ American Train Dispatchers Association
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: Case No. CRW-1-77 "Claim of the American Train Dispatchers Association that claimant J. V. Gilmore, Train Dispatcher at the Chicago Movement Office, Chicago, Ill., is entitled to eight (8) hours pay for February 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1977, when held out of service pending trial and then assigned 15 fifteen days' suspension as discipline. The imposing of fifteen (15) days suspension without pay was arbitrary, capricious and unwarranted and an abuse of managerial discretion, Claimant's record should be cleared and compensated for time lost. Regulations 6, 7-A-1(a), (e), 7-B-1(a) and 7-C-1 (a), (b), (c) and 7-D-1(a) of present Agreement with the American Train Dispatchers Association governing."

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement by withholding Claimant, Train Dispatcher J. V. Gilmore, from service without giving a reason therefore, and by suspending him from service for fifteen days for reasons other than those stated in the charges that were the basis of the investigation. The Organization asks that Claimant be paid eight hours pay for each of the ten days he was held out of service, and that Claimant's record be cleared of all references to the charges and discipline imposed in connection with this grievance.

Carrier, on the other hand, asserts that Claimant failed to follow Rule 208 and that such failure resulted in a potential head-on collision at San Pierre, Illinois. Carrier asserts that the discipline imposed was fair and reasonable in light of the seriousness of the offense.

In the Notice of Investigation Claimant was originally charged with a violation of Rule 203 in addition to Rule 208. The Rule 203 violation was dismissed by the Manager of Labor Relations. Therefore, the charge against Claimant is as follows:

"Violation of Rule 208, Paragraph 3, Rules for Conducting Transportation, issuing Train Order No. 110, dated February 4, 1977 at 5:21 a.m., restricting the movement of westward train, Engine ATSF 3621, at a point where such movement was restricted and failing to state that fact in the Train Order, while Train Dispatcher on Duty on Desk No. 2, Chicago Division, Chicago, Illinois, February 4, 1977."

Rule 208 provides, in relevant part:

"A train order restricting the movement of a train must not be issued for it at the point where such movement is restricted (except where it is required to receive Clearance Form A) if it can be avoided. When so sent, the fact must be stated in the order, the train must be stopped before delivery is made, and special precautions must be taken to insure safety."

The evidence adduced at trial indicated that Train Order No. 110 was issued at a point where movement was restricted, that no Clearance Form A was issued, and that the Train Order did not indicate that movement was restricted. The record did not indicate that Order No. 110 was issued because it could not be avoided, nor did the record indicate that the train was stopped before delivery was made or that special safety precautions were taken. The evidence in the record also indicates that Train Order No. 110 was not in proper form. Accordingly, we find ample evidence in the record to indicate that a violation of Rule 208 occurred in the issuance of Train Order No. 110. We must now assess whether the discipline imposed was proper.

Regulation No. 6 governs the imposition of discipline. It states, in pertinent part:

"6-A-1. Trial. (a) Train Dispatchers shall not be suspended nor dismissed from service without a fair and impartial trial.

(b) When a major offense has been committed, a Train Dispatcher suspected by the Management to be guilty thereof may be held out of service pending trial and decision.

6-A-3. Advance notice of trial. (a) A Train Dispatcher who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact offense for which he is to be tried and the time and place of the trial."

The Organization contends that Claimant was held out of service without being informed by Carrier of any "Major offense" having been committed. The Organization claims that the "Major offense" referred to in the February 11, 1977 letter from Mr. J. R. Gernon to Claimant (Exhibit TD-3) is the "potential head-on collision at San Pierre, Illinois, Kankakee Branch," yet this near-collision was not mentioned in the charges specified in the Notice of Trial.

Regulation 6-A-1 (b) permits Carrier to hold an employee out of service when a Major offense has been committed and the employee is suspected of committing the offense. Clearly, as the Organization acknowledges, a potential head-on collision constituted a "Major offense" within Regulation 6-A-1 (b). We are persuaded that since the issuance of Train Order No.

110 in violation of Rule 208 is alleged to have contributed to the potential disaster, and since Claimant issued Train Order No. 110, Carrier was within its rights under Regulation 6-A-1 to withhold Claimant from service pending trial and decision.

Carrier erred in informing Claimant in Exhibit TD-3 that he was being removed from service "in connection with" the potential head-on collision without then specifying that the violation of Rule 208 contributed to the near disaster. Nevertheless, since Exhibit TD-3 was received by Claimant after the trial, and the charges in the Notice of Trial were vigorously litigated at the trial, and since the Organization has shown no prejudice or harm to Claimant arising from Carrier's error in drafting Exhibit TD-3, we find Carrier's error, in this case, to be harmless.

Upon Carrier's findings that Rules 203 and 208 were violated, it ordered a fifteen day suspension of Claimant. Without in any way demeaning the importance of the Rule 208 violation, we find that where Carrier found a fifteen day suspension appropriate for the violation of both Rules 203 and 208, it would be unfair to retain the same discipline when one of the charges underlying that discipline is dismissed on appeal. Therefore, the suspension issued to Claimant shall be reduced to seven (7) days. All documents in Claimant's file shall be corrected to reflect this reduced discipline.

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

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.