

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23572  
Docket Number TD-23477

Herbert Fishgold, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association  
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the American Train Dispatchers Association that claimant H. E. Cupp was improperly held out of service for a period of eleven (11) days and assigned this period of eleven days as suspension after conclusion of trial. Claimant was charged on three (3) counts of insubordination which were not proven by management during the trial. The removal from service and the discipline of eleven (11) days is unjust, harsh and uncalled for as record of trial indicated.

The claimant should be made whole for the time held out of service and the discipline of eleven (11) days removed from his record."

OPINION OF BOARD: Claimant was working as 3-11 p.m. Relief Movement Director in the Carrier's Harrisburg, Pa. office on March 26, 1979, when Supervisor Train Operation G. E. Waltman relieved him from duty at approximately 4:00 p.m. The next day, Claimant was given notice that he was "held out of service beginning 4:00 p.m. on March 26, 1979, in connection with insubordination to two supervisors between approximately 3:55 p.m. and 4:00 p.m. on March 26, 1979" which was specified to be as follows:

- "1. Insubordination in that you failed to comply with the instructions of Trainmaster A. I. Robinson at approximately 3:55 p.m. on March 26, 1979.
2. Insubordination in that you deliberately hung up the phone, terminating the conversation with Trainmaster A. I. Robinson who had given you instructions concerning movement of trains ENSY-6 and HE-11, approximately 3:55 p.m. on March 26, 1979.
3. Insubordination in that you acted rebellious toward your immediate supervisor, G. E. Waltman, approximately 3:56 p.m. on March 26, 1979."

Thereafter, on June 13, 1979, the day following his trial, Claimant was issued a Notice of Discipline imposing eleven (11) days' suspension, which constituted the amount of time held out of service prior to his trial.

The Organization claims that Claimant was improperly held out of service for a period of eleven (11) days prior to his trial inasmuch as his actions did not constitute a major offense, which, under Regulation 6-A-1 of the Agreement, covering disciplinary action, constitutes the only basis for such penalty. Moreover, the Organization argues that Claimant was not guilty of insubordination in the manner accused.

The Carrier asserts that its action of withholding Claimant from service prior to his trial was entirely proper, inasmuch as the Board has ruled that insubordination is a serious offense warranting the imposition of discipline as severe as outright discharge. Further, the Carrier asserts that Claimant's action of failing to comply with reasonable instructions of a supervisor and in demonstrating a rebellious attitude towards a supervisor constitutes such insubordination.

The evidence shows that on the afternoon in question, Claimant received a call from Trainmaster A. I. Robinson at approximately 3:55 p.m. asking Claimant if he would "have his Train Dispatcher" hold a certain train (HE-11) back from entering Enola Yard, and to instead allow another train (ENSY-6) to leave Enola Yard. Claimant, noting the heavy concentration of trains in the territories involved, told Mr. Robinson that the usual manner for handling such matter was either directly with the Train Dispatcher by the involved Yardmaster, or through a Tower Operator, or with the Supervisor Director Operations. Their conversation was terminated shortly thereafter, with Mr. Robinson claiming, and Claimant denying, that Claimant hung up on him.

Mr. Robinson then called Supervisor Train Operator G. E. Waltman, who issued instructions to the Train Dispatcher, and no resultant delays to trains occurred.

Mr. Waltman then told Claimant that he should have granted Mr. Robinson's request. Claimant stated that "if you don't like the way I am doing my job" to "send him home." Mr. Waltman "then told him to go home."

The notices of Claimant's being held out of service and Trial followed.

The real question before the Board is whether the conduct alleged constituted insubordination. While there are contentions that Mr. Robinson did not have supervisory authority over Claimant, and Mr. Waltman acknowledged that Claimant did not fail to obey any order of his, the Board finds that what is involved was more like a difference of opinion over the manner in which the work in question - movement of trains in and out of Enola Yard - could be accomplished.

While the Board in no way finds that Claimant was without fault in this incident, it does note that he apologized for his behavior in talking to both Mr. Robinson and Mr. Waltman, and, further, the Board finds that there were mitigating and extenuating circumstances surrounding the incident in question which calls for modification of the discipline imposed. Thus, the evidence shows that Claimant had been off duty for several months due to a personal injury incurred prior to the incident in question, and had been urged to return to duty by Carrier's Night Supervisor of Train Operation in order to relieve overtime payments because of an inadequate force of extra employees. The incident in question occurred on either the third or fourth day following Claimant's return to work, and the evidence shows that Claimant had experienced further personal stress that morning involving health problems to himself and other family members. While such factors do not relieve Claimant of all responsibility for his somewhat intemperate behavior, it goes a long way to lessen the tenor of "deliberateness" or "insubordination".

In conclusion, it is the opinion of the Board that the discipline in question should be reduced from eleven (11) days to a reprimand. Having so found, the Board would make one final observation. In the Board's opinion, if the situation in question had been properly explored at the time of the incident, taking into account the mitigating and extenuating circumstances referred to above, it is doubtful that the case would have reached this level.

The eleven (11) day discipline should be reduced to a reprimand.

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 discipline was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By *Rosemarie Brasch*  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

