

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24131
Docket Number TD-24050

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
 { Boston and Maine Corporation, Debtor

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

(a) The Boston and Maine Corporation (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Article 8 in particular, by its actions following a hearing December 10, 1979, assessing discipline of 48 demerits to Train Dispatcher D. S. Robinson of the North Billerica, Mass. Train Dispatching Office.

(b) The Carrier shall now rescind the discipline referred to in Paragraph (a) and clear Claimant D. S. Robinson's record of any reference thereto.

OPINION OF BOARD: Claimant was subject to an investigative hearing on the charge of "Conduct unbecoming an employee while on duty October 28, 1979 as Conn. River Train Dispatcher (see attached letter)". The "attached letter" was addressed to a Carrier official and was from a member of the public who recounted his conversation with a Carrier employee (later identified as the Claimant, a Train Dispatcher) in which the letter writer stated that he had called to complain about a defective crossing bell and that the employee "informed me that he was going off duty in ten minutes and would do nothing. He then slammed the phone down."

The Board finds that the notice of hearing was in proper form, even though, as noted by the Organization, no violation of a specific rule was cited. The Claimant and the Organization were fully aware of the subject of the investigation and were not prevented from presenting a full defense despite the absence of a rule citation.

The writer of the letter did not appear at the hearing and thus could not present direct testimony nor be cross-examined. The Board finds, however, that the letter - which, by other testimony, was found to be received by the Carrier - could properly be introduced at the hearing. As noted in Award No. 9311 (Schedler):

"This Board, in a long line of Awards covering many years of experience, has rather consistently held that written statements of witnesses not present at the investigation are admissible."

Such reasoning is logically applicable to the letter introduced here. Indeed, it may be readily recognized that the Carrier has the right and duty to investigate complaints concerning the conduct of its employees. However, it is another matter whether such letter, standing by itself and without corroboration, is sufficient to prove the charge against the Claimant. As noted in Award No. 13464 (Zack):

"The Carrier failed to provide sufficient corroborative evidence to support the allegations in Schirmer's letter. As a result, we must conclude that the Carrier has failed to sustain the burden of proof beyond a reasonable doubt that the Claimant was guilty as charged."

In this instance, does the letter, even if taken at face value, show that the Claimant acted in such a discourteous and rude manner as to be found wanting in the proper performance of his duties? The Claimant admits to receiving the telephone call, relayed to him from another Carrier employee; that he did indicate that he was going off duty in ten minutes; that he was busy with his regular duties of train dispatcher; and that he believed it necessary to hang up on the caller when he could not otherwise terminate the conversation.

The only corroboration came from a witness at the hearing who was serving as Assistant Chief Train Dispatcher on the day in question. He testified that he received a telephone call shortly after the call taken by the Claimant, in which the caller stated, according to the witness:

"He alleged that the Conn. River Train Dispatcher told him that he was going home in ten minutes, that the Signal Maintainer for that section was off sick, and that he wasn't going to do anything about it, and that he hung up abruptly."

The Board notes that this version is somewhat at variance with the letter introduced by the Carrier. No mention is made that the telephone was "slammed", for example.

The Board also finds that the hearing was left somewhat incomplete. It was acknowledged that the telephone call had first been received by another Carrier official, most likely one in a supervisory capacity. As strenuously noted by the Organization, other Carrier employees/supervisors on duty were not called to determine what conversation, if any, had taken place with the caller prior to the Claimant being called to the telephone. There was ample showing that the Claimant had a full complement of train dispatching duties to perform at the time and that these did not normally include serving as Carrier representative with the public. Nor was any explanation offered as to why the call had been transferred to him in the first place.

The Assistant Chief Train Dispatcher characterized the caller as "very irate". His irritation could understandably have been caused by his displeasure with the constantly ringing crossing bell in the middle of the night and his inability to have something done about it, despite previous efforts.

This leaves considerable doubt as to whether such irritation colored his characterization of the treatment he received from the Claimant.

As a result of the hearing, the Claimant was assessed 48 demerits. The Board finds that the Carrier's determination of guilt was arbitrary and without sufficient foundation based on the hearing record. The charge, to be sustained, requires that adequate proof be provided. As indicated above, the Board finds such proof lacking, based both on the evidence itself and the failure of the hearing officer to interrogate other witnesses directly related to what immediately preceded the telephone call.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.