

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24612
Docket Number TD-22855

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(The Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective September 1, 1949) between the parties, Article VII thereof in particular, when the Carrier failed to allow reasonable opportunity to secure the presence of necessary representative and when the Carrier assessed thirty (30) demerit marks on the personal record of Train Dispatcher G. L. Adams (hereinafter referred to as "the Claimant") based on an investigation held on October 25, 1977. The record, including the transcript of said investigation, shows that the Carrier did refuse to grant a postponement of the investigation to allow obtaining the desired representative and fails to support the Carrier's charges of rules violations by the Claimant thus imposition of thirty (30) demerit marks was arbitrary and unwarranted.

(b) The Carrier shall now be required to remove the thirty (30) demerit marks and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: On November 21, 1977 Claimant was notified of the assessment of 30 demerits on his personal record for his part in a train derailment that occurred on October 14, 1977. Claimant appealed the discipline, contending that he was denied the opportunity to secure a representative of his own choosing for an investigation of the derailment conducted on October 25, 1977. The Organization also asserted that the facts developed at the investigation did not warrant the discipline.

Claimant, a regularly assigned train dispatcher, was informed of the investigation by notice dated October 17, 1977. By letter, dated October 19, 1977, Claimant requested postponement of the investigation until on or after November 7, 1977 in order that he could secure a national representative of the Organization. The Carrier denied this request on October 20, 1977 on the ground that thirteen principals and eight Carrier witnesses were required at the investigation. The Carrier believed that an excessive delay of the investigation would be a hinderance "since facts in an investigation are furnished by principals and witnesses who must remember, as best they can, specific circumstances as they occurred."

Facts developed at the investigation established that Claimant did not proceed in accordance with the Carrier's rules on the date of the derailment. The relevant Rules read as follows:

- "A. Safety is of the first importance in the discharge of duty.

Company rules are designed for safety and must be obeyed.

The service demands the faithful, intelligent and courteous discharge of duty.

- J. In case of danger to the Company's property, employes must protect it and take every precaution to guard against loss and damage from any cause.
131. In case of doubt or uncertainty, the safe course must be taken.
775. Train dispatchers report to, and receive their instructions from the chief dispatcher. They have supervision over the movement of trains, and employes connected therewith, on their assigned territory.

Train dispatchers must know and comply with 'Instructions For Train Dispatchers'.

Train dispatchers must take necessary precautions for the safe movement of trains at all times, issuing necessary train orders or instructions as required."

The following facts were developed at the investigation. At the time of the incident the Claimant was assigned Position No. 6511, 12:00 midnight to 8:00 a.m. shift, protecting the Needles District; the Second District between Cadiz, California and Parker, Arizona; and the Ripley District between Rice and Blythe, California, on the Carrier's Coast Lines, Los Angeles Division. At approximately 5:10 a.m., on the morning of October 14, 1977, westbound Train 138-K-1 approaching Denby, stopped at Block No. 6421 due to a double yellow signal indication. The conductor detrained and inspected the bridge as required by the rules. After this inspection, Train 138-K-1 proceeded at a reduced rate of speed over the bridge.

While proceeding at reduced speed, the engineer heard a thump, stopped the train and asked the conductor to see if there was a broken rail. The conductor did discover a broken rail and notified the Train Order Operator at Barstow at approximately 5:20 a.m. The Operator notified the Train Dispatcher, Claimant, at approximately 5:29 a.m. The Claimant then notified a Track Supervisor at 5:31 a.m., and during this conversation the Claimant asked the Track Supervisor if he should put out a reduced speed order over the broken rail. The Track Supervisor said that he would handle it and the Claimant relayed the lead engine numbers of the four trains that would soon be in the vicinity of the broken rail. In the next conversation the Claimant had with the Train Order Dispatcher at Barstow, Claimant was told that Train 319-L-1 was on the ground, at the spot of the broken rail, with 15 cars in the ditch.

Claimant's mistake was his failure to be certain. The Carrier's rules gave Claimant both the authority and responsibility to control train movements in his area. The Track Supervisor had no authority over the Claimant. The Claimant should have taken the necessary precautions and issued the reduced speed train order, which would have enabled Train 319-L-1 to pass over the broken rail without damage.

The remaining question is whether the Carrier denied the Claimant due process by refusing to allow him to secure a national representative for the investigation. If this refusal did amount to a denial of due process the Claimant's record should be cleansed of the 30 demerits.

This Board finds that the Claimant was afforded a fair and impartial hearing. Although, both the parties' agreement and the Railway labor Act provide a Grievant the right to select a representative of his/her own choosing, we find that in the unusual circumstances of this case, that that right must be read in the light of reason. Here the Carrier was faced with conducting an investigation involving numerous employees and was further required to arrange for the attendance of many witnesses and representatives. When the Claimant requested a postponement of the investigation because he was unable to obtain representation by a National Representative of the Organization until November 7, 1977 or "thereafter", the Carrier could not reasonably postpone the investigation for all individuals until this uncertain time in the future. To require the Carrier to postpone investigations to uncertain dates in the future, depending upon the availability of National Representatives of the Railway Labor Organizations, would place impossible logistics demands upon carriers as well as labor organizations and would interminably delay the grievance process. In the unusual circumstances of this case, the Carrier's notice of investigation gave the Claimant more than sufficient time to secure a competent representative and to prepare his defense. Thus, we conclude that the Claimant's rights to due process were not violated and the claim will be denied. Nothing in the above findings should be construed to mean that a carrier may deny an individual's reasonable request to postpone an investigation for the purpose of securing a preferred representative.

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

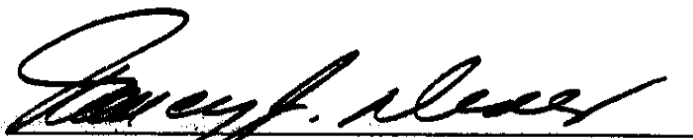
That the Claimant was given a fair and impartial hearing and the discipline assessed was not arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

