

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 27579
Docket No. CL-26664
88-3-85-3-408

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Baltimore & Ohio Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10022) that:

1. Carrier acted in an arbitrary, capricious and unjust manner when, without just cause, it assessed Ms. D. J. Sharer a fifteen (15) day actual suspension April 20 through May 4, 1982.

2. Carrier shall now be required to clear the service record of Ms. D. J. Sharer of any and all reference to said suspension and compensate her for all time lost as a result of said arbitrary, capricious and unjust action.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The Carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was advised on March 24, 1982, to attend an investigation to determine facts and place responsibility, if any, in connection with her responsibility of allegedly permitting two of the Carrier's units on the same track at the same time between Mt. Winans and Walbrook Junction (Maryland) on the morning of March 23, 1982. After the investigation was held the Claimant was advised that she had been found guilty as charged and she was assessed a fifteen (15) day suspension. The Claimant had been charged with culpability in this matter along with two train dispatchers and a fellow operator. At the time of the incident the Claimant held assignment as Third Trick Relief Operator at Emory Grove, Maryland.

As a preliminary point the Board must rule on a procedural objection raised by the Claimant. After being advised of the investigation the Claimant made request for postponement the day before the investigation was to be held since, she claimed, she had not been able to contact her Local Chairman who was "...on vacation". This request was refused by the Carrier because of the large number of other Employees already advised of, and arrangements having been made for them to attend the investigation. The Claimant was told by the Carrier to contact another representative of the Organization. She did this the night before the investigation. At the investigation the Claimant stated that she desired no witnesses to testify on her behalf, but she objected to the investigation being held that day. The Board notes that the Claimant had slightly over a week to seek representation and prepare herself for the investigation. The Carrier had the same amount of time. The Claimant called no witnesses. She also chose to wait until almost the last minute to advise the Carrier of problems she was having contacting the Organization representative whom she at first wished to represent her. From the record before it the Board must conclude that the Claimant must have known considerably earlier than the day before the scheduled investigation that the Local Chairman was not available, or if she did not she was negligent in making preparations for her own defense in an expeditious manner. The Carrier's refusal to postpone the investigation, in this instance, was not unreasonable and the objection is dismissed.

Shortly after 7:30 AM on March 23, 1982, the Claimant obtained authority from the Western Maryland Train Dispatcher at Hagerstown, Maryland to permit track car 62716 to operate over track No. 2 and main track from Westport to Walbrook Junction. Track car authority was granted for this car between these two points from 7:34 AM to 9:15 AM. At approximately ten minutes to eight, the same morning, the Hillen Night Switcher (Extra 4022) requested permission to use the main track between these two points and it moved onto the main track at approximately 8:45 AM. This resulted in both units being within the same limits at the same time. The Claimant is charged with permitting this to happen, or more properly she is charged with complicity in permitting this to happen.

The following Rules here apply.

Rule 704 (g) & (j)

"Except on non-signalled track within yard limits (Rule 93) before an authority is transmitted for track car movement, the track to be used by the track car must be clear of, and protection provided against, opposing and following train movements by: (1) Coding (where code controlled) and blocking signals and/or switches. (2) Withholding the

authority for train movements. (3) A train order that will prevent train movement into the territory to be used by the Track Car Operator reports clear:

"Exception: If it becomes necessary to remove blocking devices to route movements around the protected territory or to establish protection at a new location due to Track Car Operator reporting clear of a portion of territory, the new protection must be provided before removing the original blocking devices."

"Track cars will not be considered clear until the employee to whom the track car authority is issued reports the track car clear of the main track or signalled track. Track cars must be reported clear promptly to avoid delay to operations."

Rule 706

"Train Order Operators will keep in file for six (6) months, a copy of all work authorities and authorities for track car movements issued through their office. Each Train Dispatcher and Train Order Operator going off duty must make a written transfer or enter in the processor, all track car and work authorities in effect and blocking devices placed for protection. The relieving Train Dispatcher and Train Order Operator must sign for and understand the transfer."

"Train Dispatchers will maintain record of track car movements on the train sheet or enter in the processor and enter work authorities in the Train Order Book or enter in the processor."

"Train Dispatchers and Operators will underscore written records as repeated."

Rule 1550

"Operators report to and receive instructions from the Chief Train Dispatcher and will comply with instructions of Trainmaster, Train Dispatchers, Yardmasters, Station Agents and heads of other departments."

Rule 1557

"They must, before being relieved by another Operator, make written transfer of train orders, track car and work authorities in effect, signals and/or switches blocked, messages to be delivered and other pertinent information. They must call attention of the relieving Operator to any unfinished business.

"The relieving Operator must read to the Operator being relieved, all train orders, track car and work authorities transferred and when understanding of the transfer has been obtained, the relieving Operator will sign transfer in the presence of Operator being relieved. Such record must be maintained for future reference.

"They will notify the Train Dispatcher when not relieved at the prescribed time.

"They must become sufficiently familiar with the switchboards to enable them to make such wire connections as may be directed. Articles must not be placed behind switchboards, nor flammable articles near office wires." (emphases added)

During the investigation the Claimant testified that authority was given to the car 62716 to occupy the track, but that she refuses to allow the Night Switcher to occupy the track when the Conductor requested permission to do so at about 3:00 AM on the morning in question. She then changed her mind when she "...assumed" that the Yardmaster had the authority to permit the overlap because of a certain informal "...understanding" which she was apprised of. In her testimony the Claimant states the following:

"...(the conductor of Extra 4022 - Meadows) asked for permission to pick up five empties on the yard tracks at Fulton and continue up to the Port leg of the wye, out on the main and into Port. I replied no, he couldn't do this because I had already given the track to (62716-WESZKA). So he said to call Port and find out what they wanted him to do. I did this on the Bell phone because you can very seldom get Port Covington on the code line. I informed Mr. Kozel, the Yardmaster, where Mr. Meadows was, what he had asked to do, and which I refused to let him do because of the track car run. I was told by Mr. Kozel that he had talked to Mr. Wieszka and there was an understanding that Mr. Wieszka would not go by Mt. Winans without first talking to him; to let the switcher in. I got back on the code line and informed Mr. Meadows of Mr. Kozel's remarks, and Mr. Meadows said to me that he was on short time, did Port know this, and I said yes. He said,

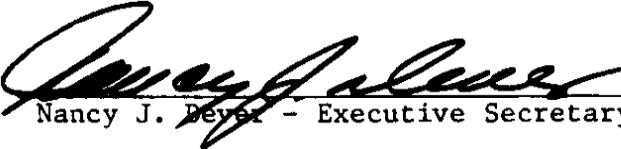
'Remind them that maybe I may not clear single track.' I asked him to stand by, re-dialed Port Covington, talked to Mr. Kozel again and informed him of this fact. He again stated he had talked to Mr. Wieszka and Wayne had a good bit of work to do between Port Covington and Mt. Winans and it would be awhile before he was out there. Again he said he had an understanding with Wayne not to go by Mt. Winans, let the switcher in No. 1 Track, to which I replied, 'As long as it's that understanding.' I assumed he being a yardmaster had that authority. In the meantime, my relief had walked in the door." (Emphasis added)

It is clear from this testimony that there were some assumptions replacing the clear instructions found, particularly, in Rule 704. This Rule does not say that authority can be transmitted for track car movement when it is assumed that the track to be used is clear: it states that the track "...must be clear of, and protection provided against, opposing and following train movements". This Rule further states that "...track cars will not be considered clear until the employee to whom the track car authority is issued reports the track... clear...". It is clear from the record that the Claimant was not the only one culpable in permitting what one might call the bending of these directives --- with potential dire consequences as the Carrier intimates. But the Claimant certainly knew, and was part of, substituting the Rule directives with informal understandings which the Board must reasonably conclude harbored potential hazardous consequences. In view of this the discipline assessed by the Carrier was neither arbitrary nor unjust and the claim cannot be sustained.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.