

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"...[r]equest that Mr. Neill be reinstated with pay for all time lost and his personal record be cleared of any reference to this incident. [Note - Appellant Neill was reinstated to service 10/26/87]"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On September 18, 1987, Claimant issued authority to a Maintenance of Way Foreman to occupy the track at a location where Claimant believed Extra 8365 West had passed. In fact, it had not passed, and Claimant issued authority for the track machine to commence work in front of it. The train was able to avert the track machine fouling the track.

Claimant was suspended from service beginning September 22, 1987. By letter dated that same day, Claimant was notified to attend a formal Hearing to determine his responsibility if any, for possible violation of Rule 486. That Rule states in pertinent part that the Train Dispatcher may grant work and time authority:

(3) "...if block is clear of train or after a definite understanding that train which has entered the block under authority of Rule 482 has passed the location where the track will be fouled." (Underline added)

Following the Investigation, Claimant was found guilty and dismissed on October 8, 1987, from the service of the Carrier. Claimant was later reinstated on October 26, 1987, resulting in a 23-day suspension.

The Organization contends that Claimant used proper judgment in reaching a definite understanding that the track was clear. Claimant could not communicate with X8365W and had to rely upon information provided by the Foreman. The Foreman had been instructed that two west bound trains would pass his location and Claimant should be notified. The Organization argues that the Foreman instructed him in a manner that clearly indicated that X8365W had passed. Such being the case, Claimant had a definite understanding and issued the proper authority.

The Carrier maintains that Claimant did not get a definite understanding that the train had passed the location before he allowed the Foreman to begin work in front of, rather than safely behind the train. It is the Carrier's contention that Claimant was properly disciplined for a serious violation of the Rules.

In this and all discipline cases the burden of proof falls on the Carrier. A review of the transcript indicates that Claimant was given misinformation on the location of the oncoming train. Such misinformation, however, was due to assumptions Claimant made, rather than specific answers to properly requested information. The failure of the Foreman to give full information on the time of the trains passing and subsequently leaving the impression that X8365W had passed, when it had not passed, could have been resolved with proper concern. The errors of the Foreman do not lessen the serious error of the Claimant (Third Division Award 25264).

A study of the time sequence, conversation, and material comments in the transcript support Carrier's action. Claimant is responsible for the safety of the crews and equipment when he gives authorization under the Rule. There is no dispute in the record that Claimant could give that authority only with a "definite understanding" that the train had passed. Claimant from his own testimony believed from the Foreman's answers that X8365W had passed, while the Foreman did not say that, and in fact was referring to the Sciba Local. Believing it to be so is not a precise, explicit, and certain conclusion fulfilling the intent and meaning of the language - "definite understanding."

In the facts of this case, the Carrier has fulfilled its burden of proof. Claimant failed to follow the Rule and, in fact, gave authority for the gang to work the tracks in front of an oncoming train. Given the seriousness of this fact and the substantial evidence of Claimant's role, this Board will not interfere with the Carrier's discipline (Third Division Award 25264).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deven - Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1990.