

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29504
Docket No. TD-29789
93-3-91-3-155

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"#1 - DISMISSAL, 2/9/90, CARRIER FILE 82-90-5

Appeal of dismissal of Train Dispatcher C. D. Beaver,
2/9/90, insubordination.

#2 - DISMISSAL, 2/9/90, CARRIER FILE 82-90-6

Appeal of dismissal of Train Dispatcher C. D. Beaver,
2/9/90."

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.

The Claimant worked as a Train Dispatcher on Job 006 at the Carrier's West Chicago, Illinois, dispatching facility. On January 19, 1990, at approximately 2336 hours, the Claimant was in charge of train movement through the point known as Kenton Avenue on the Carrier's Geneva Subdivision. While handling Train ELNPA191, the Kedzie Avenue control operator advised the Claimant of the train's departure from the Kedzie Avenue interlocking. The Claimant lined the train for Track 1 rather than Track B. As a result of the train being lined for Track 1, the high cars in the train collided with the Belt Railroad overhead bridge at Kenton Avenue.

At approximately 2340 hours, the Claimant advised the Assistant Chief Train Dispatcher (ACTD) that he erroneously lined Train ELNPA-191 on the wrong track at Kenton Avenue, and, as a result, the train struck the bridge. ACTD instructed the Claimant to stay on the property because he would be required to submit to a drug and alcohol test. The Claimant initially acknowledged he would remain. Very shortly thereafter, the Claimant stated he would leave the Carrier property in contravention of the ACTD's instructions, and the Claimant left the property before being tested as required by the Carrier's rules.

As a result of erroneously lining a train on the wrong track and causing a collision with an overhead bridge, the Claimant was charged with:

"Your responsibility in connection with your failure to properly perform your duties as a train dispatcher on Job 006 at West Chicago at approximately 2336 hours on January 19, 1990, resulting in collision of high cars on Train ELNPA-191 with the BRC overhead bridge at Kenton Avenue of the Geneva Subdivision."

As a result of his failure to obey orders and remain on the Carrier's property and take the required drug and alcohol test, the Claimant was charged with:

"Your responsibility for being insubordinate when you failed to submit to 'Reasonable Cause Drug and Alcohol Testing' as a result of the collision at the BRC bridge at Kenton Avenue by Train ELNPA-191, at approximately 2336 hours on January 19, 1990 while performing duties as a train dispatcher on Job 006 at West Chicago, Illinois."

As a result of the hearing on the incorrect lining of the train, the Claimant was dismissed. As a result of the hearing on the charge of insubordination, the Claimant was also dismissed.

With respect to the charge of failing to properly perform his duties as a Train Dispatcher, the Organization maintains the discipline of dismissal was excessive because other factors contributed to the accident. The night of the accident was the Control Operator's first night after only nine days of training. The train was delayed for a change of crews and air brake trouble, and the Claimant directed his attention to other train movement.

Although the crew should have known their train was improperly routed, they failed to call it to the Claimant's attention. When he learned of the accident, the Claimant immediately informed his supervisor, and he admitted his error during the investigation.

The Carrier noted the Claimant admitted he authorized the train to move down the wrong track and caused a collision. This type of error, Carrier states, is considered gross malperformance on the part of the Dispatcher. Further, the Claimant had just been reinstated on a leniency basis six months earlier.

With respect to the dismissal for insubordination, the Organization contends the discipline of dismissal was excessive. The Claimant became very emotionally upset because of advice given to him that he would be dismissed if he ever became involved in another accident. So he saw nothing to be gained by waiting for the testing procedure notwithstanding the fact he had not consumed drugs or alcohol in the 24-hour period prior to his tour of duty. The Claimant admitted his mistake in leaving the property at the hearing. The Organization notes this Board has previously recognized that the imposition of an excessive penalty is a violation of the Agreement protecting employees from arbitrary and capricious disciplinary action. (Second Division Award 6485; Third Division Awards 10790, 20554).

The Carrier noted the Claimant admitted violating the Carrier's Rule G policy by failing to submit to reasonable cause testing. The Carrier cited Rule G for proof that insubordination as a result of failing to take a test is a dismissive offense, and this policy has been upheld in prior decisions. (Public Law Board 4358, Award No. 1; Public Law Board 4697, Award No. 8; PLB Award 4354, Award 13; PLB 4776, Award 13; Second Division Award 11654; Fourth Division Award 4617). Further, the Claimant was reinstated on a leniency basis for violation of Rule G in August 1988. Therefore, dismissal is the proper discipline for violating Rule G.

With respect to the charge of failing to properly perform his duties as a Train Dispatcher, the Board finds the Carrier sustained its burden to prove the Claimant's conduct caused the accident and constituted gross malperformance. The Board also finds the Carrier sustained its burden to prove the Claimant failed to submit to reasonable cause testing in violation of Rule G.

With respect to the disciplinary action, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. (Third Division Award 26160). The Board finds the discipline of dismissal reasonable for both offenses. Gross malperformance constitutes a dismissive offense to prevent the dangers associated with such conduct.

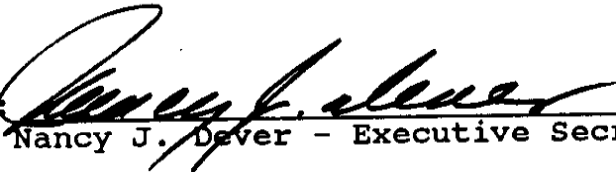
Rule G, by its very terms, constitutes a dismissive offense. Finally, the Claimant had been reinstated only six months earlier after being dismissed for a Rule G violation. Therefore, the Board finds the discipline of dismissal reasonable in this case, and the Board denies the grievance.

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 3rd day of February 1993.