



AWARD NO. 34
CASE NO. 81-22
ORT FILE: BU-4623-22

BEFORE THE
SPECIAL BOARD OF ADJUSTMENT NO. 226

THE ORDER OF RAILROAD TELEGRAPHERS)
)
vs.)
)
MISSOURI-KANSAS-TEXAS-RAILROAD COMPANY)
MISSOURI-KANSAS-TEXAS RAILROAD CO.OF TEXAS)

STATEMENT OF CLAIM:

1. The Carrier abused its discretion in dismissing Telegrapher J. F. Cheek from its service on December 22, 1958; and that
2. Mr. Cheek shall be reinstated with all rights unimpaired and paid for all time lost less a suspension of five (5) days.

OPINION AND FINDINGS:

J. F. Cheek was dismissed from service on December 22, 1958 for alleged negligence in handling Missouri Pacific train order signal at the Wagoner, Oklahoma, interlocking plant, jointly operated by the Missouri Pacific and M-K-T, between 8:00 p.m. and 9:30 p.m. on November 24, 1958.

According to the transcript of the investigation, which was held in Muskogee, Oklahoma, on December 19, 1958, Missouri Pacific Train Dispatcher Bird, about 8:07 p.m., told Mr. Cheek that Extra 594 South would be passing Wagoner about 9:25 p.m. and that Missouri Pacific No. 175, also southbound, would be behind it.

Extra 594 South did, in fact, pass Wagoner at 9:27 p.m. and No. 175 did, in fact, pass Wagoner later. The exact time of the passing of No. 175 is not in the record and is not important, but it is important to bear in mind that No. 175, southbound, passed Wagoner after Extra 594 South.

At 8:12 p.m. the Train Dispatcher directed Mr. Cheek to display the red semaphore signal for Southbound Missouri Pacific trains. Upon receiving an answer that the red semaphore signal was properly displayed, the Dispatcher gave Mr. Cheek Train Order No. 61 for No. 175. Both the Dispatcher and Mr. Cheek knowing that once the red semaphore signal had been displayed against Train No. 175 for the train order, the operating rules would not permit to to be changed to "clear" for extra 594 South, which would be ahead of No. 175. Both the Dispatcher and Mr. Cheek well knew also that Extra 594 South therefore should pass through Wagoner under the red semaphore signal, and that, in order so to pass, Extra 594 South should be given a properly filled out form called a "Clearance." This "Clearance" was duly authorized by the Dispatcher to Mr. Cheek at 8:15 p.m.

At 8:17 p.m. the Dispatcher transmitted another Train Order, Train Order No. 62, to Mr. Cheek for No. 175. At 9:17 p.m., coincidentally, the Dispatcher directed Mr. Cheek to issue a "Clearance" for No. 75 with Train Orders Nos. 61 and 62.

Under the facts stated above, Mr. Cheek, when he lined up the route for Extra 594 South to pass, should have left the red semaphore signal against Extra 594 South. Thereupon, Extra 594 South, seeing the red semaphore signal, would be on the alert and would pick up its "Clearance" from the staff as it passed through Wagoner. But, as Mr. Cheek lined up the levers for Extra 594 South to pass he, inadvertently, pulled the lever which changed the semaphore signal from Red to Green, or, from STOP to CLEAR. (This error by Mr. Cheek made no important difference to Extra 594 South because the red semaphore signal had not been displayed directly for Extra 594 South in the first place. However, Extra 594 South being on the alert while passing through the interlocking system at 9:27 p.m. did see its "Clearance" in the staff and picked it up.)

While "tearing down" the route after Extra 594 South had passed, Mr. Cheek observed for the first time that he had changed the semaphore signal from Red to Green as he had "lined up" for Extra 594 South. He immediately returned the semaphore signal to the red position for No. 175, and also lined up the route for No. 175. At this same time he reported to the Dispatcher the passing of Extra 594 South at 9:27 p.m. and voluntarily informed the Dispatcher of the error he had made.

In order to present a comprehensive grasp of the whole transaction, it should be added that, when No. 175 arrived later at the Wagoner interlocking plant, the red semaphore signal was properly displayed. No. 175 picked up its two train orders and "Clearance" and proceeded southward.

The Dispatcher was duty bound to report the infraction of an important safety rule, as described above.

Rules N, 221 and 232 of the Uniform Code of Operating Rules and Item 25 of Rules and Instruction for Operators disclose the error committed by Mr. Cheek. We will quote only briefly from one of these rules. Item 25 governing the display of train order signals provides, in part, as follows:

"While the operator holds an order for a train, he must not clear his train order signal to allow another train in the same direction to pass."

Mr. Cheek testified in his own behalf. All of the several witnesses, including Mr. Cheek, stated the facts to be as herein summarized. There is therefore not the slightest doubt of Mr. Cheek's guilt in violating the safety rules, as charged.

Mr. Cheek has been an employee of the Carrier over 20 years. This is the first charge against him for violation of a safety rule. While a violation of a safety rule, as described in this opinion, could result in a train collision, the circumstances here, fortunately, did not develop into a disastrous train accident. We are therefore constrained to decide that dismissal is too severe a penalty for the proven guilt.

The Special Board finds therefore that it will be in the best interest of all concerned for the Carrier to reinstate Mr. Cheek effective as of July 1, 1959. He shall not be compensated for time lost between the date of his dismissal, December 22, 1958, and July 1, 1959. He shall be paid for time lost between June 30, 1959 and the date of his return to service, less amount earned in any other service, as provided in Rule 8 (g).

A W A R D

Claim sustained as per findings and opinion.

s/ DANIEL C. ROGERS
Daniel C. Rogers, Chairman
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211-212 Commercial Trust Company
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s/ W. I. CHRISTOPHER
W. I. Christopher, Employee Member
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DISSENTING
A. F. Winkel, Carrier Member
Missouri-Kansas-Texas Railroad Company
Missouri-Kansas-Texas R.R.Co. of Texas
Vice President - Personnel
Dallas 2, Texas

Dallas, Texas

June 7, 1960