

Award No. 1
S.B.A. Case No. 1
(Third Division Docket No. 10036)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- "(1) The dismissal of Section Foreman H. J. Schlarman from service on July 27, 1956, was without just and sufficient cause and on the basis of unproven charges;
- "(2) Section Foreman H. J. Schlarman be reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim."

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

After investigation and hearing as provided for in the working agreement, claimant, H. J. Schlarman, was advised by letter dated August 6, 1956, by Superintendent Smith that he was dismissed from service for his responsibility in the derailment of the Blue Diamond Local on July 24, 1956.

Schlarman was returned to service November 26 with seniority and vacation rights unimpaired, with the understanding that such action did not prejudice his claim.

One of the defenses in this case is that the employee had been on vacation and "that he kindly consented to . . . protect the carrier's interest by standing by as relief for the foreman who became ill and indisposed for this particular week end."

The facts are that claimant returned to work, expecting to be paid and was paid for his work. Under the circumstances he cannot be less diligent than at other times, or expect to be held to a lesser degree of accountability or responsibility than usual.

Actually the carrier's interest would have been better protected if he had not returned to work for then, without a section foreman, the train crew of the derailed train would not have relied on him or his men and probably would under the rules have stopped their train or otherwise have protected it.

It is apparent to us in light of the evidence that the claimant had reason to know that great amounts of water were coming down the Blue Diamond spur between the Blue Diamond mine and Arden, Nevada, but nevertheless this portion of the track was not patrolled, nor was any clear information given the train crew of this fact. That fact was not revealed clearly to anyone.

On the contrary the advice or lack of advice or information or garbled or incomplete advice that actually reached the train crew from trackwalker, Marble, working under the claimant, was sufficient to confuse them. For this the claimant must be charged with his share of the responsibility for the derailment which occurred on his section of track.

Claimant states that he "intended" for the trackman to hold the train and that that was the way he meant it. (Tr. 16 and 17). True, in answer to some leading questions and at another place or two he states more definitely that he told the trackman to hold the train, but the record also contains contradictory evidence (Tr. 19). The evidence as a whole indicated that his instructions were vague and cloudy to say the least.

Where claimant told the train dispatcher, "I sent a man up there" (Tr. 16-17) his reply was ambiguous and misleading. The answer did not reveal that a portion of the track from Arden to mile post 4 was patrolled by no one or what instructions the flagman was given as to stopping the train, if any.

We are satisfied, as much as outsiders reviewing the case almost four years later can be satisfied, that the precautions taken and the instructions given by the claimant, Schlarman, that rainy night of July 24, 1956, left much to be desired.

There is no showing that the action of the carrier in imposing the discipline in this case was arbitrary, capricious or so unreasonable or disproportionate to the offense or that it amounted to bad faith. That would be enough to sustain the carrier.

The carrier was not arbitrary, capricious or unreasonable and the discipline was not disproportionate to the offense.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty
Marion Beatty, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Organization Member

(s) A. D. Hanson
A. D. Hanson, Carrier Member

Omaha, Nebraska
June 10, 1960