

The First Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Locomotive Engineers
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim for removal of discipline assessed Engineer Albert Kaupas and pay for all time lost as a result of a suspension from service beginning February 20, 1986 and ending April 11, 1986 (50 days). Claim is also made for removal of debarment from operating on the Baltimore and Ohio Chicago Terminal Railroad. Discipline was assessed after a joint Chessie/BRC investigation and hearing held on March 31, 1986 and April 7, 1986."

FINDINGS:

The First 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.

As a result of charges dated February 20, 1986, hearing eventually held on March 31, 1986, and April 7, 1986, and by letter dated April 10, 1986, Claimant was suspended for 50 days and was barred from operating on the Baltimore and Ohio Chicago Terminal Railroad.

The material facts are not in dispute. On February 19, 1986, Claimant was the engineer assigned to the Carrier's Chessie Transfer crew along with a conductor and a headman operating a two engine consist with caboose identified as BRC 602-604. After the crew completed a transfer movement to Chessie's Barr Yard, the conductor telephoned the Chessie dispatcher from a location at Rolls Avenue for instructions for the crew's return movement north to 75th Street. The conductor had difficulty understanding the dispatcher's instructions, copied the instructions on a piece of paper and then read the instructions back to the dispatcher. However, upon returning to the engine,

the conductor gave different instructions to the crew than those given to him by the dispatcher. As a result, BRC 602-604 departed Barr Yard on the wrong main track and operated against current traffic. At Harvey Junction, the crew encountered an absolute red signaled stop. Claimant then reversed movement backwards to Rolls Avenue so that the conductor could get further instructions from the Chessie dispatcher. After again speaking to the conductor, the dispatcher, apparently under the impression that the crew was on the correct track and that the stop was located at Rolls Avenue, told the conductor that the signal was not absolute and further gave instructions to proceed through the signal after stopping. The conductor then informed Claimant he could proceed through the red signal at Harvey Junction, which Claimant did after stopping at that point. Thereafter, another red signal was encountered at Blue Island Junction. The Chessie dispatcher was informed that the crew arrived on the wrong track. The chief dispatcher and road foreman visited the scene and questioned the crew. As a result, the entire crew was removed from service.

The Organization's threshold procedural objection that the Carrier failed to provide a complete transcript is well-taken. The hearing in this matter was a joint proceeding with the Carrier and the B&OCT. The hearing commenced on March 31, 1986. At the conclusion of the March 31, 1986 proceedings, and over the Organization's objection, the investigating officers continued the hearing until April 7, 1986, so that Assistant Chief Train Dispatcher C. Hall could testify. According to the transcript at p. 62:

"Statement by the Investigating Officer:

As the investigating officers, we feel it is most important that we have Mr. Hall in here as a witness for a fair and impartial hearing."

The proceedings reconvened on April 7, 1986 for the testimony of Hall and Claimant. The discipline issued on April 10, 1986. Yet, as pointed out in the Organization's April 21, 1986 appeal, when the discipline issued, a complete transcript had not been prepared:

"...[A]ll of the exhibits (a total of 14) entered into the record of this investigation have been deleted from the record....[A]ll of Mr. Hall's testimony under direct examination by the Hearing Officers and all his testimony under crossexamination by the representatives has been deleted from the transcript. Also, all of Engineer A. Kaupas's [sic] testimony under extensive direct examination by the Hearing Officers has been deleted from the transcript. Approximately two (2) hours of testimony has

been deleted. How can reasonable men refer to this transcript as an exact written transcript of the entire hearing? Six (6) of the missing fourteen (14) exhibits were presented by me and essential to my defense of Engineer A. Kaupas. How can reasonable men refer to this investigation as a fair and impartial hearing?"

The Organization's factual assertions concerning the transcript were not disputed. The Carrier stated in its June 9, 1986 declination letter:

"Your statement regarding the deficiency of the formal hearing transcript has been investigated and it appears, through no fault of this Carrier, that the B&OCT Railroad did, indeed, provide an incomplete transcript. The testimony of Assistant Dispatcher C. W. Hall and the exhibits entered into the record were mistakenly deleted.

Upon discovering this fact, the Carrier immediately contacted the B&OCT Railroad. After many phone calls, the complete transcript was finally furnished to the Carrier on June 6, 1986. Attached please find your copy of the complete hearing transcript."

Article 30(F) states:

"An exact written transcript of the entire hearing shall be promptly prepared and a copy of the transcript shall be furnished to the engineer charged or his representative and unless an express objection is made on the record by the engineer charged an additional copy of the transcript shall be promptly delivered to the General Chairman of the Brotherhood of Locomotive Engineers."

We are satisfied that Article 30(F) has not been followed. That provision requires that an "exact written transcript of the entire hearing shall be promptly prepared" [emphasis added]. Here, the Carrier issued the discipline three days after the close of the April 7, 1986, hearing when the full transcript was not prepared and received until almost two months later. Moreover, the error was not insignificant. Missing from the transcript was the testimony of dispatcher Hall - a witness deemed so important by the investigating officers that the hearing was continued from March 31, 1986, to April 7, 1986 - along with Claimant's testimony and all of the exhibits. We

note that in the Carrier's Submission, great emphasis is placed upon Claimant's testimony that he did not have members of his crew stationed at the switch points prior to crossing those points as an admission that he did not comply with Rule 509. Yet, that very testimony was part of the missing portion of the transcript. Further, we note that at the conclusion of the hearing on April 7, 1986, the investigating officer stated that there would be "a review of this investigation and transcript." The investigating officer obviously issued his decision on April 10, 1986, without the benefit of those crucial portions of the transcript. Under the circumstances of this case, such action was improper. See Public Law Board 674, Award No. 1.

The Carrier's arguments do not change the result. First, the fact that the delay in preparation of the transcript may not have been attributable to the Carrier but was the fault of the B&OCT is immaterial. Article 30(F) places the responsibility for providing the transcript upon the Carrier. Second, the fact that the Hearing Officer was the same person assessing the discipline therefore indicating that the Hearing Officer had a firsthand account of what occurred at the hearing and issued the discipline while it was fresh in his mind misses a major point of the Rule. By its clear meaning, Article 30(F) is not only for the benefit of the Carrier, but the requirement for the prompt preparation of an exact written transcript of the entire hearing is also for Claimant's benefit in terms of permitting Claimant and the Organization to defend the case on appeal. Acceptance of the Carrier's arguments would cause us to change the language of the negotiated Rule. We do not have that authority. An "exact" transcript of the "entire" hearing was to be "promptly" prepared. That was not done. We must therefore sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1989.

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

INTERPRETATION

With Referee Edwin H. Benn

Award 23930

Docket 43515

PARTIES (Brotherhood of Locomotive Engineers
TO (
DISPUTE (The Belt Railway Company of Chicago

INTERPRETATION

By Award dated April 14, 1989 this Division sustained the Claim as presented in this case on the procedural grounds that the Carrier failed to comply with Article 30(F) concerning providing the transcript of the Investigation. The Organization now seeks an Interpretation of that Award concerning the recomputation of Claimant's vacation pay for 1987 and compensation for lost wages because of Claimant's debarment from the B&O Railroad.

The Claim in this matter stated:

"Claim for removal of discipline assessed Engineer Albert Kaupas and pay for all time lost as a result of a suspension from service beginning February 20, 1986 and ending April 11, 1986 (50 days). Claim is also made for removal of debarment from operating on the Baltimore and Ohio Chicago Terminal Railroad. Discipline was assessed after a joint Chessie/BRC investigation and hearing held on March 31, 1986 and April 7, 1986."

With respect to the requested Interpretation concerning vacation pay, see Serial No. 307, Interpretation No. 1 to Third Division Award 22556:

"It is well settled that the purpose of an interpretation is to explain the Award as originally made out and not to make a new Award or consider issues that were not before the Board when the Award was issued.

When Award No. 22556 was issued there was no question before the Board concerning vacation or pay in lieu thereof for claimant in 1978, and such issue may not properly be passed upon through the guise of an interpretation. The request for an interpretation will, therefore, be dismissed."

Award 23930

Docket 43515


As in the above quoted Interpretation, a reading of the Claim shows that there was no question before this Board concerning vacation pay. As such, the request for an Interpretation concerning vacation pay is denied.

With respect to the debarment question on the B&O, again, the Claim is specific. The Claim seeks the "removal of debarment from operating on the Baltimore and Ohio Chicago Terminal Railroad." No affirmative monetary relief with respect to the debarment was sought in the Claim. Therefore, no such relief can be granted through an Interpretation.

Further, inasmuch as the Claim was made against this Carrier only and not the B&O, and because there has been no showing that the Carrier has the authority to remove the debarment order issued by the B&O, we cannot in this proceeding now require the B&O to remove the debarment order. Therefore, Claimant's rights, if any, against the B&O cannot be adjudicated in this forum through an Interpretation of this Award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1991.