

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19914**
Docket Number TD-20086

Frederick R. **Blackwell**, Referee

PARTIES TO DISPUTE: ((American Train Dispatchers Association
(Georgia Railroad

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Georgia Railroad (hereinafter referred to as "the Carrier") violated the currently effective Schedule Agreement between the parties, Article 8 thereof in particular, by its action in imposing discipline upon Train Dispatcher A. L. Hall, based upon charge made against him on June 30, 1972, and hearing held pursuant thereto.

(b) The Carrier shall now rescind the disciplinary **action** taken and clear the record of Claimant A.L. Hall.

OPINION OF BOARD: Following hearing, claimant "as assessed thirty (30) demerits for failure to comply with special instructions to notify the General Superintendent-Chief Engineer of a request from another railroad to borrow Carrier's wrecker. Petitioner says the discipline should be set aside because claimant was not afforded due process by the hearing procedure.

The discipline resulted from an incident which occurred while claimant **was** working a third trick dispatcher position. The request to borrow Carrier's wrecker came in at about 1:00 a.m. Claimant had authority to lend the wrecker, which he did, but he did not report the matter to the appropriate officials until the **next morning**. At the hearing Claimant said he read the special instructions as giving him the option of reporting promptly or waiting until the next morning to report. **However, the** Carrier said the instructions provided no option and that they required an **immediate** report, i.e., at 1:00 a.m., which claimant failed to do.

Petitioner's due process contention is that Mr. J. L. Wilson, Jr., Superintendent of Transportation, issued the special instructions in question, brought the charge against claimant of non-compliance with the instructions, and conducted the hearing on the subject of claimant's non-compliance with the instructions. Objections on these grounds were timely raised at the outset of the hearing on the charge.

Many Awards 'of this Board have found no inherent due process defect in the practice of multiple functions being reposed in a single Carrier official in a disciplinary proceeding. We believe, though, that this case falls outside the boundaries of those authorities. There was no dispute on the facts of when

claimant made his report, for he readily acknowledged that he made it the next morning. The issue was whether this action could be regarded as authorized by a reasonable interpretation of the instructions, albeit the Carrier had a different, and also reasonable, interpretation of the instructions. In this context the author of the instructions and the claimant were too closely akin to adversaries, because the claimant sought to convince the author that his, the author's instructions had two different meanings. Where such issues are drawn, we think it presumes too much to regard the author as a neutral on the question of what his instructions mean. The following extract from the hearing transcript plainly shows that Mr. Wilson could not conceive of the instructions having the meaning which claimant gave to them.

"Wilson: Mr. Hall, how can you say **that** you could wait until morning to notify Mr. Jones when these instructions read otherwise?"

Hall: Mr. Wilson, this was my understanding that this was what these instructions meant.

Wilson: Mr. Hall, am I to understand that you do not understand these instructions?"

Hall: Mr. Wilson, I thought I did until I was charged with this violation.

Wilson: Mr. Hall, how can you say that you thought you understood these instructions when they read otherwise?"

We **have** no doubt that Carrier has sole authority to say what its special instructions mean. We also have no doubt that discipline **will** not lie in the instant dispute if more than one interpretation can reasonably be drawn **from** the instructions. But this issue was not fairly tried. Since the central fact of the hearing involved the issue of whether claimant's interpretation was a reasonable one, and since Mr. Wilson was the author of the instructions in controversy, we think Mr. Wilson either should not have served as hearing officer, or should have taken testimony on the meaning of the instructions **from** another competent Carrier witness. He did neither and we conclude that claimant was thereby deprived of a fair and impartial hearing. Accordingly, we shall sustain the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute **are** respectively Carrier and **Employee** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over
the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD **ADJUSTMENT** BOARD

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That this **Division** of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim sustained.

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