Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 2637
FOURTH DIVISION Docket No. 2603

Referee Harold M. Weston

PARTIES TO DISPUTE: Railroad Yardmasters of America

Penn Central Transportation Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America: -

System Docket No. 304 - Cincinnati Division Case No. Y-13-68

"Appeal, Under Rule 6-A-1, relative to your letter of disqualification addressed to Yardmaster William M. Lee."

OPINION OF BOARD: Claimant was disqualified as yardmaster and assistant yardmaster by Carrier's letter of February 16, 1968, on the ground that he had permitted "track 402 to be shoved west resulting in sideswipe and damage to locomotive 5877 and derailment of SSW 85532 at west end track 402 at approximately 4:55 a.m., February 14, 1968."

The applicable rules, unlike almost all other comprehensive labor-management agreements, do not require a hearing or include any special discipline provision. Instead, they provide in Rule 6-A-1 that when "it is considered that an injustice has been done with respect to any matter arising under this Agreement," the yardmaster "affected" may present his case in writing to his immediate superior and, if the latter's decision is unsatisfactory, appeal to the Superintendent-Personnel. This procedure was followed in the present case.

Before disqualifying Claimant, Carrier questioned him and obtained his written statement in the presence of his Local Chairman. Although this proceeding took place on short notice by telephone, neither Claimant nor his representative objected or requested additional time for preparation and the Agreement contains no notice requirement.

In his statement, Claimant denied instructing or permitting track 402 to be shoved westward. He stated that he instructed Partin, the conductor on Crew 30 C, to proceed to the III track and get 9 cars and tie them on to track 402 on the east end. He pointed out that Coughlin, the yardmaster on the other end of the yard, had informed him that he had made 3 rips on the west end of track 402 but was coming out of that track with the rips.

Despite the fact that Claimant knew that Coughlin's Crew 34C had been working the west end of track 402, he made no effort by telephone, radio or any other means to make certain that the rips referred to by Coughlin had cleared the track before sending his Crew 30C with 9 cars on to the east end of the track. Claimant conceded those facts but maintained that he assumed that the track was clear since some 15 to 20 minutes had elapsed between the time Coughlin told him he was coming out "with the rips" and the time Crew 30C was prepared to move on the east end of the track. Unfortunately, Crew 34C was still on 402 when Crew 30C arrived and, as a result, locomotive 5877 of Crew 34C was sideswiped and damaged and the derailment of SSW 85532 occurred.

Claimant's own statement clearly lends support to Carrier's theory that he failed to exercise the judgment it has a right to expect of employes in supervisory positions. Whatever may have been the practice between yardmasters, his failure to communicate with Coughlin to obtain assurance that the track was clear appears to be a serious error under the circumstances.

It may well be that Crew 30C should have avoided the mishap by the use of due care. We agree with Petitioner that a yardmaster must not be charged with responsibility for a crew's negligence. However, this is not a situation where a supervisor is being required to guaranty his subordinates' performance of their duties. Here, Claimant by his own statements showed that he failed to exercise proper judgment and care in this situation (Cf. our Awards 1302, 2236 and 2366).

We have not referred to or considered Coughlin's or Partin's statements because the latter was not made until after Claimant was disqualified and neither was made in the presence of Claimant or his representative. While there is no requirement that a hearing be held, elementary principles of due process and fairplay prescribe that an employe be given the right to confront and cross-examine his accusers. This defect did not prejudice Claimant's case, however, in view of his own admissions.

Upon reviewing the entire record, including particularly the negligence shown by Claimant's own statement, Carrier's right to demand a high level of performance by supervisors and its responsibilities for safety, we find no basis for setting aside Carrier's action and will deny the claim.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing, but were granted the privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: E. A. Killeen
E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1971.