

The Fourth Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmaster Department
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Claim and request that Yardmaster S. M. Yakalavich be compensated at the Yardmaster rate of pay for all wages lost as the result of attending the hearing held November 10, 1988, and that the Claimant's record be cleared of the reprimand assessed as the result of that hearing pursuant to Rule 6 of the Agreement.

FINDINGS:

The Fourth 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.

The Claimant was directed to attend an Investigation on the following charge:

"Your failure to coordinate work which resulted in two crews CR-9 and YICE-31, occupying the same track, and making opposing moves at approximately 11:20 PM, 424 track, Conway Yards, Conway, PA, on October 11, 1988, while assigned as Yardmaster at 4 Hump."

In a companion case, Fourth Division Award 4734, the Yardmaster at the pullout end of the yard was confronted with an identical charge except for its reference to "... assigned as Yardmaster at 4 Yard."

Because of the commonality of issues, a joint investigation was conducted on November 10, 1988.

The essential facts are not in dispute. Claimant was working the Hump Yardmaster position on October 11, 1988. At about 10:45 P.M. Claimant instructed the conductor of the Hump Engine known as CR-9 to start cars off on Track 424. At approximately 10:50 P.M., the engine crew began the assignment. Claimant admits she did not communicate with the Yardmaster at 4 Yard to report that she was sending an engine onto Track 424. Moreover, the record does not reflect that Claimant instructed the engine crew to inform the 4 Yard Yardmaster of their impending or actual entry onto Track 424. The conductor admitted that no such communication transpired. When asked why she did not inform the 4 Yard Yardmaster of the fact that she was going to start the track, the record shows Claimant replied that the 4 Yard crew is not usually working that early in the shift. Unbeknownst to Claimant, the 4 Yard Yardmaster issued instructions at approximately 11:20 P.M. to the crew of YICE-31 to couple the same track. The 4 Yard Yardmaster admits that she did not inform the Hump Yardmaster of the crew going onto the track from the pullout end. Likewise, the record does not reflect that the 4 Yard Yardmaster instructed the engine crew to inform the Hump end Yardmaster of their impending or actual entry onto the track, nor does the record show the crew made such a communication. Thus there were opposing moves unknowingly set into motion on the same track. The presence of the opposing engines became known only when the conductor of YICE-31 happened upon the conductor of CR-9 in the darkness. The CR-9 conductor was in between some cars trying to move a drawbar.

At the conclusion of the investigation, the Claimant was assessed discipline in the form of a reprimand.

The Organization argues that the Carrier has failed to sustain its burden of proof of Claimant's guilt. It submits the evidence is clear that this event occurred solely due to the fault of others, most notably the crew of CR-9, in failing to communicate as Terminal General Notice #88 required. The Carrier contends it has proven Claimant had responsibilities independent of the crew of CR-9 which she failed to carry out. The fact that others may have failed in their responsibilities does not exonerate Claimant.

Satisfaction of the burden of proof requirement is a close question in this matter. It has been sharply contested by the parties. By long established precedent, the role of this Board is to review the record before us to determine whether it contains substantial evidence to support the disciplinary decision of the Carrier. If the record contains such substantial evidence, it is not our province to substitute our judgment for that of the Carrier.

Based on thorough review of the record, we conclude the Carrier has satisfied its burden of proof. The existence of a rule, policy or procedure is established both through Carrier witness testimony as well as Terminal General Notice #88. That Notice reads in pertinent part as follows:

"Train & Engine Service Employees
Yardmasters
Trainmasters

Prior to coupling class yard tracks or making room on a class yard track from the hump end, the crew involved will communicate DIRECTLY with the pullout Yardmaster at the other end to ascertain that no other crew is in on that track. The Yardmaster at the pullout end will then be responsible to see that no other engine or cars are put to that track until the engine at the hump end has reported clear by direct communication.

* * * *

YARDMASTERS WILL BE RESPONSIBLE TO SEE THESE INSTRUCTIONS ARE ADHERED TO. . . ."

The obvious purpose of the Notice was to establish communication procedures to prevent exactly what happened in this case. It specifically corroborates the Yardmaster communication duties described by Carrier's witnesses. The record is clear that Claimant neither instructed the crew of CR-9 to inform the pullout Yardmaster, as Notice #88 required, nor did she communicate the information herself. It is true the Notice imposed a notification responsibility on the crew of CR-9. The record indicates the crew failed in its responsibility. However, the Notice clearly places compliance responsibility on the Yardmaster. Accordingly, it was not an abuse of discretion for the Hearing Officer to conclude that Claimant failed to carry out her work responsibilities.


Inasmuch as the culpability of the Claimant is established by substantial evidence in the record, it cannot be said that discipline in the form of a reprimand was excessive or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:



Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1990.