

PUBLIC LAW BOARD NO. 2763

Award No. 3

Docket No. 3
2-YG-163

Parties Railroad Yardmasters of America

to and

Dispute The Baltimore and Ohio Railroad Company

Statement

of Claim: Claim on behalf of C. W. Momber for one (1) day's pay at the applicable yardmaster straight time rate for attending investigation on July 17, 1979 and for the removal of the five (5) day overhead suspension from Mr. Momber's service record which was assessed as a result of that investigation.

Findings: The Board, after hearing upon the whole record and evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 28, 1980, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on June 27, 1979 was the regularly assigned Yardmaster working the first District Hump at Rothberg Yard, Toledo, Ohio, 6:30 AM to 2:30 PM. Claimant, during his tour of duty, instructed the 7:00 AM Hump crew to add an additional 28 cars to Hump Track No. 13. Claimant further advised said crew to shove the cars in the clear of the south end as the switches of the north end were properly aligned for such movement. However, it was later discovered that the switches at the north end were not so lined and the last cars were shoved out on another track on the north end through the switch.

Subsequently, the 7:30 AM Lake Coal Puller picked up cars on Hump Track No. 13 after it began to pull such cars south out of track 13. Three cars at the north end thereof were derailed as a result of being pulled back through the switch which had previously been run through.

Claimant was given notice to attend a formal investigation on the charge:

"With responsibility in connection with derailments of AMCX 5515 and 2 other cars at the north end of hump 13 at approximately 12:15 PM on June 27, 1979..."

Thereafter, Carrier concluded Claimant to be culpable and advised him:

"It has been found that you are at fault for failure to properly instruct the 7:00 AM crew in the shoving of cars on Track No. 13, by assuming that the route was properly aligned with the North End of the yard, resulting in the switch being run through, causing the derailment of AMCX 5515 and 2 other cars at the north end of hump No. 13 at approximately 12:15 PM on June 27, 1979 in violation of Operating Rule 1401 and 103-A."

The Operating Rules cited read:

"Yardmaster Rule 1401:

They are responsible for the safe, efficient operation of the yards. They must be familiar with the rules and special instructions for movement of trains and governing of employees in train and yard service and must require the prompt efficient discharge of duty by employees who are subject to their direction."

Operating Rule 103:

"When shoving tracks or when doubling over, or placing cars on a track, unless it is known the track will accommodate the movement without fouling other tracks, without shoving over end of track, a man must be stationed at the leading car or at the rear of such track in position to be clearly seen and to give signals, unless the movement is otherwise protected..."

The discipline rule, Article 22, reads:

"(a) Yardmasters shall not be disciplined or dismissed without a hearing before a proper officer. Such employee shall be apprised in writing of the precise charge against him, with copy to the Regional Chairman, and hearing will be held within ten (10) days, if possible. He shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be represented by the duly authorized representative. He may, however, be held out of service pending such investigation.

Stenographic report will be taken of all hearings or investigations and the employee involved and the Regional Chairman shall each be furnished with one copy.

(b) A decision shall be rendered within twenty (20) days after completion of investigation, with copy to the Regional Chairman.

(c) An employee dissatisfied with the decision shall have the right to appeal the next higher officer. If an appeal is taken, the appeal and decision must be within the time limits specified in Article 21."

We find in the absence of any contractual or other basis therefor, that it was not error for Carrier to not include in its notice of charge to Claimant the Rules allegedly violated. We cannot agree that because Article 22 (a) mandated a "precise" charge that such would include identification of Rules alleged to have been violated.

Did Claimant receive a "precise charge"? We think not. A fair reading of precise charge permits the conclusion that it was not precise. Although he may have been aware of the derailment at 12:15 PM, the charge was not such as to permit him an idea as to what he was to defend against. He was not given the who, what, when, where and why of the situation. As pointed out in Fourth Division Award 3489 (Sickles) between these parties:

"...Whether or not the issue of 'precise charge' is properly before us, nonetheless, when Article 7(a) of the Agreement recites that a hearing will be held, it must be presumed that said hearing, is in contemplation of a charge of some asserted dereliction."

The burden for obtaining witnesses under Article 22 rests with the Employee.

Claimant could not reasonably ascertain from the charge given him under date of July 10, 1979, that such placed him on notice what he had to defend against as it was not a precise charge.

In these circumstances, we reach no further and will sustain the claim on the basis of a violation of Article 22(a).

Award: Claim sustained as per findings.

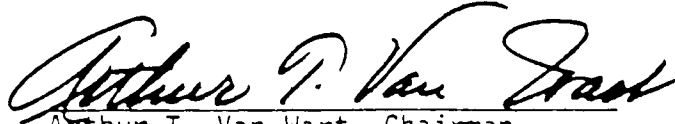
Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.



R. C. Arthur, Employee Member



W. C. Comiskey, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, July 30, 1981.