

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13167
Docket No. 12992-1
97-2-94-2-54

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Edward Gray
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

"I question the fact that I received a five day suspension, for the derailment of a locomotive that my foreman instructed me to move. There were between seven to ten derailments prior to my incident that the individuals responsible received seven to ten days overhead."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Following an Investigation, the Claimant received notification dated February 24, 1994 from the Carrier which read in pertinent part as follows:

"The investigation determined that you are responsible for the derailment incident of January 3, 1994 in that you took it upon yourself to

move a consist of locomotives and that while making this move you trailed through a switch without properly aligning it. This was the cause of the derailment of CSXT 1505 and the resulting damages. It was further disclosed that you are a qualified engine mover and were trained in the proper manner to move engines and align switches.

The discipline administered is five (5) days actual suspension. . . .”

On May 10, 1994, the Claimant wrote to the Board as follows:

“This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission within thirty (30) days covering an unadjusted dispute between me and the CSXT, involving the questions:

I question the fact that I received a five day suspension for the derailment of a locomotive that my foreman instructed me to move. There were between seven to ten derailments prior to my incident that the individual responsible received seven to ten days overhead.”

The Claimant in fact did not file a Submission with the Board until March 28, 1995.

The Carrier points out, without contradiction, that the Claimant failed to follow the requirement of Section 153, First (I), which states in pertinent part as follows:

“The disputes between an employee . . . and a carrier . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes.”

The Claimant's action on his own volition is acceptable if undertaken according to the applicable procedure. Nothing in the record, however, indicates that the Claimant handled the dispute “in the usual manner” or requested a conference with the Carrier's highest designated officer. On this basis alone, the claim is unequivocally improperly before the Board for resolution. The Board notes the Carrier's allegation, although without supporting documentation, that the Claimant's Organization was concurrently processing a claim on behalf of the Claimant. If such is the fact, there is further cause for not giving separate consideration to the claim.

Form 1
Page 3

Award No. 13167
Docket No. 12992-I
97-2-94-2-54

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 29th day of October 1997.