

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23966**  
Docket Number **m 23223**

George E. Larney, Referee

PARTIES TO DISPUTE: { (American Train Dispatchers Association  
                                  { **Indiana Harbor Belt Railroad Company**

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

(a) The **Indiana Harbor Belt Railroad Company** (hereinafter referred to as "the Carrier") violated the current Agreement, (effective April **28, 1932** with amendments to December **1, 1954**) **between** the parties, **Article 9** thereof in particular, when the Carrier failed to give train dispatcher G. C. **Hartley** (hereinafter referred to as "the Claimant") a hearing within ten days from date of notice as provided in the Agreement and when the Carrier disciplined the **Claimant** by a letter of reprimand. The record, including the transcript, does not support the **Carrier's discipline** assessment or establish guilt **on** the part of the Claimant and the discipline decision was not rendered by the Superintendent or his designated representative. Therefore, the imposition of **any** discipline was arbitrary, **capricious**, unwarranted, and an abuse of managerial discretion.

(b) The **Carrier** shall now be required to remove the letter of reprimand **and** clear the Claimant's personal record of the charges which allegedly provided the basis for said **action**.

OPINION OF BOARD: Claimant, **G. C. Hartley**, a Train Dispatcher regularly assigned to **Carrier's** Gibson train dispatching office located in **Hammond, Indiana**, was summoned to an investigatory hearing in connection with a derailment which occurred in the early morning hours of January **24, 1978**, during Claimant's assigned third trick which **commenced** at **11:00 PM** on January **23, 1978**. The following written notification of investigation was issued to the Claimant, and one other train dispatcher, as well as five (5) members of the train **and** engine crew involved **in** the derailment:

"Please **arrange** to report to the office of the Terminal Superintendent, **Indiana Harbor Belt Railroad**, Gibson General Office Building, 2721 **161st** Street, Hammond, **Indiana** at **9:00 A.M.** on Wednesday, February **1, 1978**, for an investigation to develop the facts and determine **your responsibility**, if **any**, in connection with derailment of and damage to I.H.B. Diesel Units **#8790 - 9003**, and cars **CCLX #400257, CCLX #400227, CCLX #400244, CCLX #400204, CCLX #400230**, at approximately **4:55 A.M. on January 24, 1978**, vicinity of Spud House lead at approximately 139th Street."

Subsequent to the issuance of this notification, the record reflects the Local **Chairman** of the United Transportation Union, representing the five (5) charged train **and** crew members, made written request by letter dated **January 30, 1973**, to postpone the scheduled **investigation** due to the absence of a **Mr. H. Collins**, one of the **charged** crew members, then on vacation. **As a** result, the **hearing** was

rescheduled for March 1, 1978. On that date the investigation commenced but was recessed shortly thereafter to March 7, 1978, due to the absence again of Yardman, H. Collins. Based on the facts adduced at the March 7th hearing, Claimant was determined to have been negligent with regard to the derailment in question by failing to notify the train crew that the Spud House Track on which the derailment occurred had earlier been taken out of service. Accordingly, Carrier disciplined Claimant by issuing him the subject letter of reprimand.

The Organization contends the instant Claim should be sustained on the basis of two (2) procedural defects caused by Carrier in its handling of the Claim, both fatal to its case. The first procedural defect relates to the timeliness of the hearing. On this point, the Organization cites Article 9 (b) of the Controlling Agreement effective April 28, 1932, with amendments to December 1, 1954, which states in pertinent part the following:

"(b) Hearings

A train dispatcher who is charged with an irregularity which might result in his being disciplined shall be notified in writing of the precise charge against him and given a fair and impartial hearing by the superintendent or his designated representative within ten days from the date of such notice."

The Organization argues that it did not join in the United Transportation Union's request for a postponement of the hearing and therefore when Carrier granted such request without seeking its agreement to so do, Carrier violated Article 9 (b) relative to affording Claimant a hearing within the contractually agreed upon time limit.

The second procedural flaw, submits the Organization, arises from the same portion of Article 9 (b) wherein it alleges, the written charge against the Claimant was not precisely stated, as such, the Organization contends, Claimant was unable to adequately defend himself, for he was without knowledge as to what Agreement Rules and/or regulations he violated. In support of its position on this point the Organization cites as pertinent the following Third Division Awards, Numbers 19642 (Lieb-n), 14778, 17066 (Dugan) and Fourth Division Award, Number 3508 (Lieberman).

Carrier defends its position relative to the timeliness allegation by arguing the postponement was not unilaterally effected either arbitrarily or by whim, but because it felt that all persons with knowledge of the incident should be present at the investigation. Carrier asserts that time limits in discipline cases are not sacrosanct unless it can be shown that the due process rights of the Claimant were violated or that the discipline assessed was excessive or capricious. In support of its assertion, Carrier relies on the following Third Division Awards, Numbers 4781 (Stone), 8807 (Railer), 11775 (Hall), 17167 (Jones), 18523 (Rimer), and 20423 (Lieberman). Carrier avers that in the instant case

the evidence reflects the **following**: (1) the hearing was timely scheduled; (2) at the **hearing** Petitioner acknowledged that the presence of all interested parties was a condition necessary for a fair and impartial hearing; and (3) neither Claimant or Petitioner raised an objection at the time when the January 30, 1978 postponement letter was issued. **Carrier** further argues it is **beyond reason** to hold that an **employee** can prevent it from **having** a proper hearing over a time limit argument when the cause for delay is the unavailability of one of the principals. **Assuch**, **Carrier** asserts, the Rule of Reason must be held to apply in the case at bar.

As to the second alleged procedural defect regarding the preciseness of the charge **against** Claimant, **Carrier** maintains the notice of hearing in the instant case met all the criteria which are required of a precise charge **in** railroad discipline. **In** support of its contention, **Carrier** cites Third Division Award No. 3270 (Carter), which reads in pertinent part as follows:

"The formation of a charge and the giving of notice thereof need not be in the technical language of a **criminal complaint**. It is sufficient if it appears that the one charged understood that he -was being investigated and that he understood the dereliction of duty affording the basis of the complaint."

In addition, **Carrier** raises its own procedural issue, alleging Petitioner is guilty of having violated the Controlling Agreement as well **as** Section 3 First (i) of the Railway Labor Act by bypassing the specified **appeals** procedure for handling disputes on the property when Petitioner appealed the instant claim directly to the highest appeals officer. **Carrier** asserts the appeals procedures as set out on the property must be followed even if that means **appealing** to the officer who issued the discipline in the first **instance**. Accordingly, in the instant case since the **discipline was** issued by the Supervisor **Train Operations**, **Carrier** argues, the appeal should have first been directed to the Superintendent prior to appealing to **the Manager**, Labor Relations. **Carrier** further argues that because Petitioner failed to follow the proper appeal procedure, the instant claim must be dismissed.

Notwithstanding its position on the procedural issue, **Carrier** advances its argument relative to the merits, maintaining the Claimant's own testimony offered at the **March 7, 1978**, hearing proves he knew the track in question **was** out of service **and** though he had **ample** opportunity to prevent the use of the track, he took absolutely no affirmative **action which** was his **duty and responsibility** as a Train Dispatcher to so do, to prevent the derailment from occurring. **Carrier** acknowledges others beside the Claimant may also have 'had responsibility for the occurrence of the derailment, but that **such** recognition cannot be viewed as excusing Claimant from accepting his own responsibility and involvement in the subject incident.

Our review of the entire record evidence leads us to the following determinations with respect to the several **procedural** issues raised by the parties :

(1) **TIMELINESS OF HEARING**

We are persuaded Carrier erred in not consulting with the Organization prior to issuing the continuance requested by the Local **Chairman** of the United **Transportation** Union. However, on balance, we do not believe **this** failure to consult is fatal to Carrier's case **in** the instant matter as such delay was in the best interest of all charged employees, including the **Claimant**, insofar as **insuring and** protecting Claimant's due process rights by **having** everyone present at the hearing who had knowledge of the incident;

(2) **PRECISENESS OF CHARGE**

We are persuaded from a thorough reading of the charge that it was sufficiently precise, albeit void of **any** reference to any specific rule or regulation violation, to inform the **Claimant** of the reason for his being summoned to the hearing, and adequately stated to **permit** him to develop a defense against the allegations contained in the charge. We therefore find this procedural issue **nonmeritorious**;

(3) **IMPROPER APPEAL OF CLAIM**

We find the language of Article 9(c) to be clear **and unambiguous**. The pertinent section of 9(c) reads as follows:

"(c) **Appeals**

If the decision is not satisfactory to the train dispatcher, the case may be appealed **through** the **committee** to the next higher official within fifteen days from the date decision is received by the train dispatcher."

When read in conjunction with section **9(b)**, we are persuaded that the next higher official refers to the designated **Carrier** officer above the Superintendent level regardless of whether the Superintendent, as he did in this case, designates a **subordinate Carrier** officer to conduct the hearing in his stead. Therefore, we conclude, the Organization properly appealed the instant claim.

As to the merits of the case, it is **our** determination that a preponderance of the evidence supports Carrier's position that Claimant was in part responsible for the occurrence of the subject derailment **and** accordingly, we must therefore deny 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 **Employees** involved in **this** dispute are respectively Carrier **and Employees** within the **meaning** of the Railway Labor Act, as **approved June 21, 1934;**

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

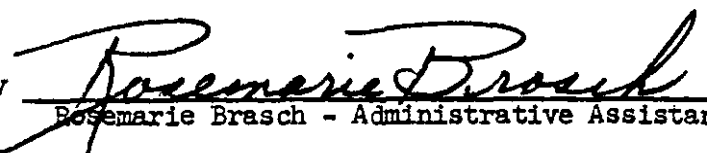
That the Agreement was not **violated.**

A W A R D

**Claim** denied.

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

**ATTEST:** Acting **Executive** Secretary  
National **Railroad** Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago, Illinois**, this **16th** day of **August 1982.**