

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25640

Docket Number TD-25694

Stanley L. Aiges, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Southern Railway Company

STATEMENT OF CLAIM: Claim of- the American Train Dispatchers Association:

Request that Train Dispatcher C. D. Chambless be cleared of the charges (dated October 14, 1982) and his record posted accordingly, that he be restored to his former position, **and** that he be paid his net wage loss.

OPINION OF BOARD: Claimant C. D. Chambless is a Train Dispatcher assigned to Carrier's Birmingham, Alabama Train Dispatch office. On September 29, 1982, he issued Track Time Form 23-A, No. 39 to Maintenance of Way Foreman Sanders. It resulted in rail being laid between **12:23** p.m. and **3:30** p.m. in a tunnel between **Winburn** and Sterrett, Alabama. The basic charge against Chambless is that he issued the track time contrary to the instructions of Chief Dispatcher W. K. **Bice** to keep the line open for **movement** of trains **and** tonnage. Following a hearing, Chambless was found guilty of disobeying **Bice's** instructions. He was issued a 30-day disciplinary suspension, which is disputed here.

The Organization raises a fundamental procedural argument. It asserts Chambless did not receive a "**proper** hearing" in that a "fair and impartial" hearing was **not** conducted. This argument must be considered before any evaluation of the merits is undertaken.

Needless to say, the Carrier has "in its hands the basic machinery of the judicial process upon the property.. (Third Division Award No. 17311.) The responsibility for conducting **an** investigation is the **Carrier's**. An investigation **"is** precisely what the term implies". (First Division, Award No. 20906.) It is an opportunity to develop fully all facts related to a charge. **"All** material evidence must be heard. This evidence is not confined to that which alone will support the charges. For this purpose a reasonable latitude is allowed to all interested parties for the presentation of the facts.* (Ibid.)

Thus, investigatory hearings are designed to get the facts. They are **"not** to prove the guilt of the accused. [They] must be fair and **impartial...Otherwise**, the investigation would be a mockery and likely a miscarriage of justice would **result"**. (Second Division, Award 2923)

These are "serious procedural requisites and the party who ignores them does so at the peril of its substantive **case"**. (Fourth Division, Award 3137)

We have carefully reviewed the transcript of the investigatory hearing conducted in this case. We are constrained to conclude Claimant was not provided a fair and impartial hearing. Several factors prompt that conclusion.

To begin with, we **note** that the Hearing Officer initially directed that the witnesses be segregated. That was a perfectly proper procedure. Once adopted, it is necessary to adhere to **it** throughout the hearing. Yet, the Hearing Officer elected to have the key witness (**Bice**) against Claimant **return** to the hearing **room** as he was about to testify. **When** reminded that witnesses were to be segregated, the Hearing Officer stated that he had recalled **Bice** to the room 'so he can hear what Mr. Chambless has to say about this issue...' Told that **Bice** was "not under **charge**", he insisted that he **wanted Bice** 'to hear what Mr. Chambless says.' Asked why, he replied "Because I want him to know what Mr. Chambless says in this investigation and hear it right from Mr. Chambless' own mouth". Asked "why" again, he replied "Because I want him to do that, that's why".

In our view, the Hearing Officer plainly erred here. Having made a procedural determination to segregate witnesses, he should have applied it in a consistent manner. Moreover, it was not necessary for **Bice** to hear Claimant's testimony directly. **Bice** was not responsible **for** making an evaluation of the record; the Hearing Officer was. Claimant was entitled to testify without the threat of intimidation which his direct Supervisor's presence could present.

Second, when **Bice** was open to cross-examination, the Organization's Representative asked whether he had also issued an instruction to Claimant on September 28, 1982. The question had not been completed when the Hearing Officer interrupted. He objected to questions being entered on dates which **preceeded** the September 29, 1982 incident. The Organization's Representative took "strong exception". He said, "if you had waited to see what I had to **say**, you would have found that it pertained to the **29th**". An **off-the-record** discussion ensued. Upon its conclusion, the Hearing Officer stated the area which the Organization's Representative wished to explore "has nothing to do with the **issues**" at bar. He affirmed his initial ruling. The Organization's Representative, again, took "**strong** exception". He insisted the document discussed off-the-record "is very pertinent to the events on September 29th".

When cross-examination resumed, the Hearing Officer twice registered a "violent objection" to questions posed to **Bice**. He warned him that if such questions continued, "**I'm** going to ask you to excuse yourself from the investigation".

It is clear to us that the Hearing Officer erred seriously. It is one thing **to** try to keep a **Hearing** on track. It is quite another to issue rulings which unduly limit the ability to conduct an effective **cross-examination** of a key witness. If an **error** is to be made on a point of admission of a possibly pertinent line of inquiry, it should be on the side of admission, not **exclusion**.

Moreover, it is imperative for a Hearing Officer to project a proper judicial demeanor. It is inconsistent with that responsibility for him (her) to register "violent objections'. (**Emphasis** added.)

In sum, we are constrained to conclude that the net effect of the Hearing Officer's rulings and demeanor were of such a nature as to cause reasonable doubt as to the fairness and impartiality of the investigation conducted. Claimant was fully entitled to one under Article 10 of the Agreement. Under the circumstances, we have no choice but to set aside the discipline imposed. The claim here is sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, **this** 30th day of September, 1985