

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25953

Docket Number TD-26041

John W. Gaines, Referee

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

STATEMENT OF CLAIM:

"Request that the disqualification of G. C. Hartley as Asst. Chief Dispatcher/Trick Train Dispatcher be rescinded and removed from his personal record."

OPINION OF BOARD: Claimant, at the time of incident giving rise to this Claim, was serving in the capacity of Assistant Chief Train Dispatcher. His discipline, following a once-postponed Hearing, was disqualification of Claimant from service in that capacity. An undisputed indication of the Ex Parte submissions is that Claimant consequently exercised his rights as Yardman in Carrier's service.

The incident took place during third shift being worked by Claimant on September 19-20, 1984, in connection with getting a puller train underway promptly.

Claimant had dispatching authority over the train; it was to be operated out of Blue Island Yard and moved to an assigned delivery point 30 miles away. So arrangements were required to cover the train by assigning an Outer Belt Crew for the operation; Claimant, by oversight or otherwise, made no arrangement during his shift. Following that delay, there was another delay before the next dispatching shift discovered the oversight and, ultimately, the puller train was covered during that shift and was moved to the assigned point and delivered.

Documentary and taped evidence and testimony established that Claimant had been amply apprised of presence in the Yard of the specific puller train and of a specific Outer Belt Crew for assignment to the waiting train. The Hearing Officer determined Claimant had the knowledge but failed to act; Claimant contends he was without knowledge of the situation and cannot be held accountable.

The record on a full review upholds the Hearing Officer's conclusion as fully supported and impartial.

The Organization asserts as a violation that the Hearing as eventually convened did not meet the 10 days provision of Article 9. The issue is decidedly controversial, and this Board looks on the point as being whether the postponement goes to a matter of substance or procedure under the Article.

The moderate delay Carrier introduced allowed a principal witness to become available; the witness gave relevant corroborating testimony as to information imparted to Claimant clear and sufficient for him to act.

Procedural flaw must give way to substance here, to preserve Claimant's substantive rights requiring essential facts to be developed in order to reach a fair determination on his case. (Third Division Award 24084 and its Dissent.)

Further procedural points relate to the matter of adequacy of the charge and other matters criticized; the Board considers and rejects them. The charge need not specify Rules. A full investigation into Claimant's conduct should adequately establish which Rule, if any, is violated by whatever conduct is proven.

In this record effecting Claimant's disqualification, no clear abuse of managerial discretion is apparent to the Board, and the Claim will be denied.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.