

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27091
Docket No. TD-26911
88-3-85-3-687

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

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM:

"Request that the discipline of ten (10) days overhead suspension be removed from Chief Train Dispatcher A. J. Romeo's service record, and that he be compensated for any time lost attending the investigation. Carrier file DG-271."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant, an Assistant Chief Train Dispatcher, was subject to an investigative hearing and charged with refusal to comply with the instructions of the Power Coordinator, while on duty as Assistant Chief Train Dispatcher at Barr Yard at approximately 11:54 p.m., C.S.T., on Tuesday, December 4, 1984. Following the hearing, the Claimant was assessed a disciplinary penalty of ten days' overhead suspension.

The Organization argued at the hearing and subsequently that the notice of the investigation, as quoted above, did not comport with the requirement of Article 12(b) that such notice "clearly specify the precise charge." The Organization notes in particular the absence of reference to violation of any Rule.

The Board finds that the charge was sufficiently precise in that it particularized the nature of the alleged offense. The Organization and the Claimant had no difficulty in presenting a full defense to the charge. In instances such as this, the charge was adequately stated for compliance with Rule 12(b), even without Rule citation.

The events which led to the charge occurred in the last five minutes of the Claimant's on-duty status. He received a telephone call from the Power Coordinator to "hold 2 CP units to protect an on time call for DT 10." The Carrier's conclusion was that the Claimant refused to comply with the direction. The Claimant's position is that he was simultaneously involved in carrying out other work and simply turned the matter over to another Assistant Chief Train Dispatcher who was present and who was in the process of relieving him. The relieving Assistant Chief Train Dispatcher took over the telephone immediately.

The discipline assessed against the Claimant was based on alleged violation of Rules K and K-2, which read in part as follows:

"Civil and courteous behavior is required of all employees in their dealings with the public and with each other....

Employees must not be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent. They must not willfully neglect their duty, endanger life or property or make false statements or conceal facts concerning matters under investigation."

Based upon the record, the Board finds that there is insufficient proof of violation of such Rules, despite contrasting testimony as to the exact nature of the brief exchange of conversation between the Claimant and the Power Coordinator. There is, therefore, no basis for the resulting discipline.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.