

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28319
Docket No. TD-28441
90-3-88-3-231

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Appeal of thirty days suspension (reduced to fifteen days) assessed Train Dispatcher A. P. Luedtke July 22, 1987 - Carrier file NEC-ATDA-SD-70D."

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.

By letter dated July 8, 1987, the Claimant was directed to appear for a formal Investigation on the following charge:

"Violation applicable portion 3rd paragraph Rule 913, and 1st para. Rule 101, AMT-1 in that you failed to issue necessary instructions for the safe and efficient movement of Train No. 202 engine 907 after you authorized the removal of Panel Blocking Device on No. 1 track east at Fair at approximately 6.51 a.m., and authorized No. 202 engine 907 to proceed east on No. 1 track while NJ Transit Train #3804 engine 1398 was authorized to stop on No. 2 track at Princeton Junction and receiving passengers across No. 1 track during your tour of duty as Train Dispatcher Section B, Monday, July 6, 1987."

Subsequent to the Investigation, the Claimant was found guilty and he was assessed a thirty day suspension, reduced by the time that he had been held out of service.

The Organization has pursued its Claim on behalf of the Claimant on procedural and substantive grounds. On the former, it mainly contends that the incident that caused the instant dispute is not the type which should cause the Carrier to hold the Claimant out of service pending Investigation. Further, the Claimant was held from service because of an alleged violation of Rule 107(a). However, when the Claimant was formally charged and a decision rendered, two other Rules were cited, but no mention was made of Rule 107(a). And lastly, on the procedural matter, the Organization points to Rule 19(b) and argues that the Hearing Officer rendered the decision in this matter rather than the Superintendent, as required by the Agreement.

With respect to the procedural arguments, there is no question that the Claimant was aware of the nature of the charge and, hence, he was not damaged or hampered in his ability to defend himself. Thus, while we understand the Organization's contentions with respect to the citing of Rule 107, this had no adverse effect on the Claimant's rights.

With respect to the Claimant being held out of service pending the Investigation, it has been consistently held in this industry that charges involving safety, as in this case, may properly be the basis for holding an employee out of service.

Finally, with respect to the alleged violation of Rule 19(b), the Organization's argument is not without some substance on a technical basis. However, this Board finds that this is not reason to set the matter aside. The Hearing Officer is required to convey to the deciding authority, by one means or other, his views as to the guilt of the party to the charges. Furthermore, in this case, the Organization was put on notice, on April 9, 1987, on the property by letter to the General Chairman, that a modification to the disciplinary hearing procedure had been made. All-in-all, we find no basis on procedural grounds for deciding this matter in favor of the Organization.

Turning to the merits of the case, we find sufficient evidence that the Claimant failed to issue necessary instructions. We agree that the operator at Fair Tower also violated the controlling operating Rules. However, that does not absolve the Claimant from properly performing his duties.

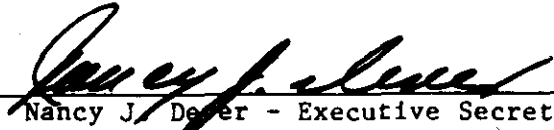
A W A R D

Claim denied.

Form 1
Page 3

Award No. 28319
Docket No. TD-28441
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.