

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28771
Docket No. TD-28708
91-3-89-3-48

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association)
(CSX Transportation, Inc.)
(Formerly The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"Appeal of 10 days actual suspension from service assessed Train Dispatcher T. L. Wallerich [Carrier file 10-(88-4)]"

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.

An Investigation was held on January 18, 1988, to determine Claimant's responsibility, if any, in connection with damage to flat Car No. NYSW and Container Nos. SEAU 105596, 463942, 416526 and 140071 at approximately 2330 hours on December 3, 1987, at MP 28.2 on the Blue Island Subdivision while operating Train R-231. Based on the investigative record, Carrier concluded that Claimant failed to instruct properly the train crew when taking other than the normal route which contravened Rules 531 and 532 of the Carrier's Operating Rules. Claimant was assessed ten (10) days actual suspension.

In defense of its petition contesting said discipline, the Organization contends that Claimant received no information from the crew regarding the contents of the train, particularly with respect to the height of the cars. It acknowledges that he was aware that all of the trains were doubled stacked cars, but maintains that no one made him aware that any cars in excess of 17'2" high were in Train R-231. Furthermore, it asserts that crew members were mindful of the restricted height of the overhead bridge at 19th Street and were aware or should have been aware of the apparent inconsistency between the height of the cars and the height of the bridge. It argues that Claimant had no information regarding the precise height of the cars and takes exception to Carrier's contention that Train Dispatchers are required by rules to instruct crews to observe dimensional restrictions.

Contrawise, Carrier contends that Claimant was responsible for insuring that trains are directed in a safe manner and consistent with the applicable rules and special instructions. It asserts that Claimant was aware of the height of the 19th Street BN Overhead Bridge and aware that said bridge necessitated restricted movement. It points out that while Claimant might not have known exactly what Train R-231 contained, he failed to take any action to protect its movement on No. 1 main at 19th Street and failed to instruct the train crew as to the movements to be made when taking other than the normal route.

In considering this case, the Board concurs with Carrier's finding. We have carefully reviewed the investigative transcript specifically the on-going communicative relationship between Claimant and the crew of Train R-231 within the context of the cited Carrier's operating safety rules and within the context of the height restrictions of the Overhead Bridge at 19th Street. Accordingly, predicated upon this detailed review we are compelled to conclude that Claimant didn't exercise that needed degree of prudent judgment under these operating circumstances and discipline was indeed warranted. We believe, however, that ten (10) days actual suspension was somewhat excessive and it is thereby reduced to five (5) days. Claimant is to be made whole for the difference in time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.