

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(CSX Transportation, Inc.
(Former Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM:

"Appeal of suspension from service assessed Train Dispatcher D. M. Strelczyk, 8/2-6/89. Carrier file 10-(89-26)"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 was charged with responsibility for failure to protect properly certain equipment movement on May 11, 1989.

Subsequent to a number of postponements at the request of the Organization, a Hearing was conducted, and thereafter the Carrier assessed a five (5) day suspension.

When the Claimant's position was abolished, he did not have sufficient seniority to transfer to Jacksonville, Florida and consequently was placed into a furloughed status. Nonetheless, it was recognized by the parties in 1988 that employees in Claimant's category could be used, from time to time, to perform extra work. Those employees were entitled to a "bonus" of \$10.00 per day as well as payment of mileage, meals and lodging, etc. (See Side Letter No. 12).

The Claimant was performing service in the Jacksonville office pursuant to the Side Letter when he was charged in this matter. The Organization asserts that he was subject to the Jacksonville Train Dispatching Center Agreement (JCTDC) and thus the charges were not submitted in a timely fashion. To the contrary, Carrier argues that the Claimant was subject to the basic "Chessie" Agreement and thus, the notice of charges was timely. While we might suppose that there is some degree of posturing involved, since the decision on the applicable Agreement controls the procedural objection, we note that the documents of record are not crystal clear on the subject, nor does the side letter state which Agreement controls. Under those circumstances, the Board feels that it is appropriate to apply the terms of the basic Agreement under which the Claimant's rights have accrued, and we determine that the basic Chessie Agreement controls, and the procedural objection must be dismissed.

Other procedural objections were raised concerning tapes, witness production, etc. We have studied the record and find that the Claimant's basic rights were protected. He was given the opportunity to recess the proceedings to secure additional witnesses, etc. but elected not to.

Concerning the merits of the dispute, the record shows that this Claimant gave permission to two separate trains to occupy the same track, and that he created a potentially dangerous condition. A consideration of the various contentions, positions and urgings of the Claimant and the Organization does not alter that final conclusion. The penalty imposed was not excessive under the circumstances.

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 22nd day of November 1991.