

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30053
Docket No. TD-30665
94-3-92-3-325

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Appeal of suspension of Train Dispatcher W. E. Brown for 17 days, 2/21/91. Carrier System
Docket TD-87-D"

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 employe 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.

Claimant was employed as the Harrisburg East Train Dispatcher with almost 23 years of seniority. On June 7, 1991, he was requested to attend an Investigation on February 12, 1991, for the following:

"Your failure to provide the temporary block operator at Tillys a copy of Form D No. C 316, which authorized the against-the-current-of-traffic movement of Extra 6478 on No. 2 Track from CP-Phoenix (sic) to Tillys, at approximately 1:15 PM, February 5, 1991, while employed as Harrisburg East Train Dispatcher, 7:00 AM - 3:00 PM, February 5, 1991."

Claimant was held out of service pending the Investigation. After the Investigation, Claimant was suspended for 17 days including the time held out of service preceding the Investigation.

The basic facts are not in contention. On February 5, 1991, Claimant failed to provide the temporary block operator at Tillys a copy of Form D, No. C 316. This document is issued to authorize the against-the-current-of-traffic movement. Failure to issue the form to the operator is a violation of Rule 301 of NORAC Operating Rules. Accordingly, this Board sees no reason to disturb the Carrier's assessed discipline.

However, Claimant was held out of service pending the investigation. Rule 18 Section 1(b) of the Collective Bargaining Agreement states:

"(b) An employee may be held out of service pending hearing only if his retention in service could be detrimental to himself, another person, or the Company."

Claimant has almost twenty-three years of service. There is nothing in the record to suggest that his retention in service would be detrimental within the meaning of Rule 18, Section 1(b). Therefore, the agreement was violated.

Rule 18, Section 2(b) (1) provides for the handling of suspensions as follows:

"(b) (1) If the discipline is suspension, the period of suspension shall be deferred if within the succeeding six (6) month period following notice of discipline the accused employee does not commit another offense for which discipline is subsequently imposed."

Inasmuch as Claimant's suspension included those days the Claimant was improperly held out of service without pay, this Board finds the Carrier also violated Rule 18 Section 2(b) (1) of the Agreement. Had the Carrier complied with this rule, the Claimant's suspension would have been deferred for six months. Accordingly, the Board finds the Claimant is entitled to restitution of the wages lost as a result of being held out of service pending the results of the Hearing.

A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.