

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30555
Docket No. CL-31088
94-3-93-3-118

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when the award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(CSX Transportation Inc. (former Baltimore
(and Ohio Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10928) that:

1. Agreement was violated when, on June 17, 1988, Extra Clerk A. G. Matson was assessed sixty (60) days actual suspension as a result of an investigation held on June 8, 1988.
2. Carrier shall now allow Mr. Matson one (1) day, eight (8) hours, at the pro rata rate of \$97.09 per day, or his guaranteed rate, whichever is greater, rate of his regularly assigned position as Extra Clerk, Rockwood, Pennsylvania. Payment is hereby requested for five (5) days' payment for each calendar week beginning on date of Friday, June 17, 1988, and continuing until such time as this claim is resolved or Mr. Matson is returned to service."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 by the Carrier as an Operator at Hyndman Tower. On May 20, 1988, in the course of his duties, Claimant lined a switch to permit helper engines to move from the No. 2 Main to the Pit Track. After the movement of the helper engines was complete, he failed to realign the switch for the Main. Approximately one hour after he had aligned the switch for the helper move, Train R-136-19 approached the Tower on the No. 2 Main. It received an approach signal, indicating that the train should proceed prepared to stop. The Engineer radioed Claimant to determine what was causing the approach aspect and was advised by Claimant that "he [the train] had the signal," which the Engineer reasonably understood to allow him to proceed.

On the basis of Claimant's instruction, the Engineer proceeded. He did not see the restricted signal indication, which was displayed because of the open switch, until it was too late to stop, even with an emergency brake application, before the train left the Main and collided with the helper engines on the Pit Track, causing approximately \$80,000.00 damage.

The Carrier charged Claimant with responsibility in connection with the collision and damage and scheduled an Investigation for May 27, 1988. However, the Carrier had also charged the Engineer in connection with the incident; and the Organization representing the Engineer requested a postponement, which the Carrier granted without TCU's concurrence.

Rule 47 of the applicable Agreement requires that an Investigation "...shall be held within ten (10) days from the date when charged with the offense...."

The Hearing was held, as rescheduled, on June 8, 1988. The Organization did not object to the postponement in advance of the Hearing or at the outset of the Hearing. Only during the course of the Hearing did it object. The Carrier asserts that it was not untimely in responding to the appeal, since Rule 48 does not require any specific Carrier Officer to respond.

After the Hearing, the Carrier found Claimant at fault in the collision and damage and assessed him a suspension of 60 days. The Organization appealed the penalty and, when the appeal was unsuccessful, brought the dispute to this Board. The Carrier responded to the appeal through its Superintendent of Operations, rather than the Division Manager.

The Carrier argues that the record clearly establishes Claimant's culpability in connection with the collision and damage, in that Claimant left the switch aligned against the Main and failed to notify the Engineer, indeed, giving him reason to believe

that he could proceed. The Carrier points out that the Organization was properly notified of the postponement, but did not object to the postponement at that time or at the outset of the Hearing. The Carrier urges, therefore, that Claimant's suspension stand and that the claim be denied.

The Organization argues that the Carrier's action must be overturned on procedural grounds because the Carrier failed to hold the Hearing within the time limits required and failed to obtain the Organization's permission for the postponement. The Organization also urges that the claim be sustained because the Carrier failed to respond to its appeal within the required 60 days, since the Official who responded to the appeal, the Division Manager, was not in the order of succession for handling disputes. The Organization urges, therefore, that the claim be sustained.

The record clearly establishes Claimant's culpability in connection with the collision and damage. Indeed, the Organization did not contest the merits of the dispute. The Board concludes that Claimant is guilty of the charges. The Board further concludes that the penalty of a 60 day suspension for Claimant's serious violations is not arbitrary or excessive.

Of the Organization's objections to the timeliness of the Hearing as a result of the postponement, the Board is not persuaded. While a timely Hearing is an important right and must be protected, the realities of the workplace is that rescheduling of Hearings is frequently necessary to accommodate the schedules of party representatives, employees or witnesses. When a postponement is granted by the Carrier on the basis of a request by another Organization and the second Organization involved in the Hearing does not agree, it is incumbent on the Organization to object. This the record indicates the Organization did not do, either at the time notice was received, or at the outset of the Hearing when asked if Claimant's representative was ready to proceed. Indeed, the Organization participated in the entire Hearing without raising an objection and waited until its closing statement to do so for the first time. Under such circumstances, the Board concludes that the Organization failed to enter a timely objection and is estopped from doing so after the taking of the evidence has been completed. The Board also notes that there is no showing that Claimant or the Organization were prejudiced by the delay, which extended only 15 days from the date of the incident.

The Board is persuaded that the Organization's objections to the timeliness of the Carrier's response to the appeal is similarly without merit. Rule 48 (a) of the Agreement requires only that "the Carrier" respond to appeals within 60 days of filing. It does not require response from any particular named or titled officer. If the Parties had wished to specify a particular individual or office to respond, or to require that the officer to whom the appeal was addressed must respond, they could have inserted

language to require it. They did not. Superintendent Gibson is clearly an officer and agent of the Carrier with authority to convey the Carrier's position. The Board concludes that his response to the Organization's appeal satisfied the requirements of Rule 48 (a).

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.