

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32203  
Docket No. TD-32667  
97-3-95-3-604**

**The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.**

**(American Train Dispatchers Department/International  
( Brotherhood of Locomotive Engineers**

**PARTIES TO DISPUTE: (**

**(Chicago and North Western Transportation Company**

**STATEMENT OF CLAIM:**

**“This appeal is based on the fact that the Carrier failed to provide Appellant Hohenzy with a fair and impartial investigation. The decision by Mr. Murphy to assess discipline breaches Appellant's basic right to an independent review of the record and determine his culpability based solely on evidence adduced at the investigation. In this case, Mr. Murphy investigated the alleged incident, decided that an investigation was warranted, determined Appellant's guilt, and assessed discipline. Such a process required Mr. Murphy to review his own original decisions in this matter, thus violating Appellant's right to an independent review of his case. Additionally, I find it rather impossible for Mr. Murphy to issue Discipline Notice No. 215 on December 15, 1994 based on the review of the investigation transcript dated December 16, 1994. Clearly, this is a total violation of Appellant's right to a fair and impartial hearing.**

**I respectfully request that you consider this appeal and find in favor of the Appellant. We specifically request that you allow compensation for all lost time, lost benefits, and expenses incurred in attending the investigation and removal of any reference of this discipline from Appellant's personal record.”**

**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 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 were given due notice of hearing thereon.*

On November 20, 1994, Claimant Hohenzy issued Bulletin No. 14528 for the wrong subdivision. Claimant admitted the error at his Investigation. Following the conclusion of the Hearing Claimant was assessed a five day suspension.

The Organization has appealed this assessment of discipline to this Board on a variety of procedural grounds. The Board has considered each and determines that they do not possess sufficient merit to warrant that the discipline assessed in this matter be modified. Accordingly, the claim will be denied.

### **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 17th day of September 1997.