

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33140
Docket No. MW-33323
99-3-96-3-827**

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspensions] imposed upon (a) Mr. G. N. Hall for violation of CSX Transportation Operating Rule 707 (Part 3) on September 28, 1995 and (b) Messrs. T. L. Hall and K. A. Hobart for alleged violation of CSX Transportation Operating Rule ‘V’ on September 28, 1995 was harsh, excessive, on the basis of unproven charges and in violation of the Agreement [System File 18 (19) (95)/12 (95-1211) LNR).
- (2) The Claimants shall ‘. . . be repaid for the 30 day suspensions including any lost overtime, have their lost time counted as days worked for the purpose of accumulating benefits and have their records cleared of any reference to this incident.’”

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.

This dispute involves Welder G. N. Hall, Welder Helper T. L. Hall and Truck Operator K. A. Hobart who were each assessed discipline of 30 days suspension as a result of an Investigation held on October 11, 1995. The discipline was imposed because the three Claimants occupied and repaired track on September 28, 1995 without authority from the Train Dispatcher. In order to perform such work it is necessary to request and receive permission from the Train Dispatcher under CSX Transportation Operating Rule 707. The Claimants were assigned to work between certain Mile Posts.

In order to obtain authority under Rule 707 Claimant G. N. Hall was required to contact the Train Dispatcher, obtain an authority number and to be given permission to occupy the track on September 28, 1995.

As required, Claimant G. N. Hall placed the required stop signs to alert oncoming trains of the work being performed on the portion of the track between the Mile Posts. He then attempted to reach the Dispatcher before beginning work, but was unable to do so.

The three Claimants began working with Section Foreman C. C. Byrd who had been issued a Form 707 adjacent to Claimant G. N. Hall's territory. They worked with Byrd until approximately 3:30 P.M. when Claimant G. N. Hall began working in his own territory.

It was about 4:00 P.M. that Claimant G. N. Hall became aware that he had a problem with the 707. Claimant T. L. Hall told him that the Dispatcher was on the radio and needed the authority number. At that time Claimant G. N. Hall first realized that he had not cleared his 707 with the Dispatcher. He had already cleared approximately eight trains before 4:00 P.M.

Because he did not have authority to occupy the track from the Dispatcher, Claimant G. N. Hall was charged with violation of Rule 707 (3). Claimants Hall and Hobart were charged with failing to hold a "job briefing" prior to beginning work, in violation of Operating Rule V.

Among the threshold issues raised by the Organization that must be resolved before any consideration can be given to the merits is the claim that the Hearing was held outside of the time limits set forth in the Agreement. In this connection, Rule 27 (c) in relevant part, provides that “. . . formal charge should be made in writing and the hearing begun within 10 days thereafter.”

The charges in this case were issued on September 29, 1995. The Investigation was scheduled for October 5, 1995. Sometime prior to October 5, the Carrier verbally notified the Claimants that the Investigation was postponed due to Hurricane Opal. The Hearing was then held on October 11, 1995, which was beyond the ten day limit under Rule 27 (c).

The Carrier unilaterally postponed the October 5 Hearing because of the threat caused by Hurricane Opal. However, the Hearing was scheduled to take place in Flomaton which is 90 miles from the Gulf Coast. Whether there were circumstances present in Flomaton that amounted to an emergency was not verified. Moreover, there is nothing in the record to establish that witnesses who were necessary in providing for a fair Hearing were prevented from being able to attend the October 5 Hearing.

The October 5 Hearing was postponed until October 11, 1995. Thus, the Hearing took place subsequent to ten days after the charges were issued on September 29, 1995. The Organization raised its objection to the postponement which was part of the record at the Hearing. Even assuming that the threat of Hurricane Opal reached the level of an emergency to necessitate the postponement of the October 5 Hearing, there is nothing in the record to indicate why the Hearing was not re-scheduled to be held within ten days after the charges were issued on September 29.

The ten day period for a Hearing which is required under Rule 27 (c) is not a matter dealing with a mere technicality. The duty of the Board is to apply the simple and unequivocal meaning of the words of the Agreement as written. The issue is not relegated to a mere technicality or to assess whether there was prejudice to the party who raises the issue under Rule 27 (c).

What is at stake is fidelity to the contractual bargain struck by the parties. See, e.g., Third Division Awards 22258 and 23082. Accordingly, by its failure to conduct the Hearing within ten days after the charges were made in writing against the Claimants,

under the circumstances found in this record, the Carrier violated Rule 27 (c). Accordingly, there is no need to address the merits of the instant dispute.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1999.