

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33490  
Docket No. TD-34406  
99-3-97-3-898**

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

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

**PARTIES TO DISPUTE: (**

**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“This will serve to appeal the Carrier’s decision and discipline imposed on Train Dispatcher M. D. Cole, as result of formal investigation conducted January 14, 1997.**

**We specifically request that Train Dispatcher M. D. Cole be compensated for the twenty (20) days of time lost as a result of this suspension.**

**Additionally, the Organization requests that the Claimant be cleared of all charges and his record be amended accordingly.”**

**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 December 22, 1996 the Claimant, serving as Train Dispatcher in the Cincinnati, Ohio, area was authorized by his Train Director to permit Train Q37021 to travel on Stores No. 1 Track. As required, Claimant executed the order. In doing so however, he did not order the Train Director to apply blocking devices. Subsequently, the Train Director ordered Train J78722 to travel on the same track in the opposite direction. When the operator of Train Q37021 reported that fact to the Claimant, the Claimant revoked the authorization to Train J78722.

Following an Investigation the Claimant was issued a 20-day actual suspension, but only after he declined a ten day actual suspension if he would "unconditionally waive" his right to a formal Investigation.

The Organization contends that the discipline imposed in this case must be overturned because the Investigation was not fair and impartial and/or because the penalty was arbitrary and capricious. Although we do not agree with all of the Organization's arguments, we do agree that the Investigation was flawed in some respects and that the penalty was improper.

The first procedural argument by the Organization is that the charges in the first instance were vague because no specific Rules were cited by the Carrier. Although the Organization is factually correct, the charges clearly set forth the time, place, date, train numbers involved in connection with the Claimant's "... failure to provide proper protection prior to issuing permission to Train Q37021 to operate against the current of traffic ..." Under these circumstances, and in light of the fact that the Organization mounted an able and complete defense on the merits of the charge, we do not believe that the Claimant's right to a fair and impartial Investigation with respect to his knowledge of charges made against him was compromised.

The Organization's second procedural argument, however, raises serious shortcomings with the Investigation. The record is clear that the Carrier did not make available, despite the Organization's request, the Train Director and other Train Dispatchers who had knowledge of the incident at the Investigation. As is clear from the facts of the incident, the Train Director's conduct, and perhaps his complicity, are critical to the charges against the Claimant and particularly his defense to the charges. Thus, by failing to make this critical witness available upon request, the Carrier failed to give the Claimant the opportunity to confront the evidence of the Carrier that he was guilty of the charges.

The Board cannot ignore, however, the fact that although the Train Director ordered train movements that were in conflict with those he had authorized the Claimant to carry out, the record is clear that the Claimant nonetheless failed to insure that blocking devices were implemented following his authorization of Train Q37021. As such, he is indeed guilty of misconduct that was not tainted by the Carrier's procedural shortcomings. We then must face the question of the penalty warranted by those shortcomings.

Clearly, the seriousness of the incident is demonstrated by the conflicting train movements that were authorized, albeit by someone other than the Claimant. Thus, a 20-day actual suspension is not justified, but is rather arbitrary and capricious. However, because the Claimant did not insure that blocking devices were implemented, proper safeguards were not in place. Accordingly, it is the view of the Board that given the unique circumstances present in this case the appropriate penalty is a formal Letter of Reprimand and we so order.

### **AWARD**

Claim sustained in accordance with the Findings.

### **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 22nd day of September 1999.**