

Award No. 16849
Docket No. TE-17480

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
PENNSYLVANIA NEW YORK CENTRAL
TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

1. John E. Block was denied due process when he was dismissed from the service of the Carrier for incident on August 19, 1965, in which two other employees were equally responsible.
2. The unilateral action of the Carrier in the dismissal of John E. Block is arbitrary, unwarranted and excessive.
3. The Carrier shall restore John E. Block to the service of the Carrier with seniority and all other rights unimpaired, and pay him for all time lost and expenses incurred, until restored to the service.

OPINION OF BOARD: Claimant, a block operator was charged with, tried for and convicted of violating the second paragraph of Rule 317 in that he failed to issue a Form K clearance card to Extra 8916 North to pass certain block-limit stations and the first paragraph of Rule 705 in that he failed to insure that all conversation in connection with his issuance of block authority to Extra 8916 was understood. The charges were filed as the result of Extra 8916 colliding with an opposing train because of the overlapping of the block authority of each train. Upon Claimant's conviction, the discipline of dismissal was imposed.

Initially, Claimant contends that the proceeding on the property was unfair because the Carrier's initial decision was rendered by an official other than the officer who conducted the investigation. It is true that the record does not indicate that the hearing officer made the decision as to the discipline to be imposed; however, there is no provision in the applicable rule providing that a hearing officer must render the decision. Claimant's contention in this regard is, therefore, without merit. Award 16007 (Ives).

Next, Claimant contends that the discipline was not imposed in an "even handed manner" because a report of the Interstate Commerce Commission

indicated that two other employes also shared responsibility for the collision and these employes received less discipline from Carrier than did Claimant. This evidence was never introduced in the proceeding on the property and, therefore, can not now be considered by us.

For the above and foregoing reasons the claim is denied.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1968.