

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25432
Docket Number TD-25440

Eugene T. Herbert, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association:

"...the discipline administered in this case ['TEN DAYS ACTUAL SUSPENSION to start at 12:01 AM November 13, 1982 and terminate 11:59 PM November 22, 1982'] is harsh and excessive. It is our request that Mr. Smith's record be cleared of this entry, and that he be compensated for all time lost."

OPINION OF BOARD: On October 21, 1982, the Chicago-Philadelphia Trailer Train entered the working limits of a Maintenance of Way crew near Mile Post 62.5 and was required to make an emergency stop. Investigation revealed that Claimant had been instructed to provide notification to trains moving between New Castle, Pennsylvania and Haselton, Ohio to the effect that track maintenance work was being performed in the area in question.

The record further reveals that Claimant could have complied with the instruction but instead chose to rely upon his replacement on the following shift to give the notice to trains moving east from Haselton. In doing so, he acted at his peril and the failure of his replacement to take the required action does not diminish Claimant's basic responsibility in this most serious matter.

The Board finds that Claimant has been accorded full due process under the Agreement, that there is substantial evidence of his guilt, that the Carrier's decision was neither arbitrary nor capricious and that the punishment imposed was, under the circumstances, neither harsh nor excessive.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.