

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27209
Docket No. TD-27166
88-3-86-3-368

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: "Mr. Kennedy shall have his record cleared of any and all charges which may have resulted from the incident which occurred on June 26, 1985,...and he shall be compensated for any and all lost wages."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On June 26, 1985, a near collision occurred based on a train passing two successive red signals and coming close to another train. Without question, knowledge of this occurrence was immediately known to the Carrier.

On July 2, 1985, the Claimant, a Train Dispatcher, was notified to be present "as a witness" (not as a principal) in a formal investigation concerning "the failure of the 11:00 P.M. Thunderbird switch crew to operate properly through the Automatic Interlocking at Shelton on June 26, 1985." On July 11, the Claimant was notified that this investigation was being postponed. On the same date the Claimant was notified of a hearing scheduled for July 18, 1985 "to develop the facts and determine responsibility" for failure of the train to "operate properly and safely." The hearing was held on July 18, and as a result the Claimant was given a disciplinary suspension based on the Carrier's determination of his share of responsibility for the incident.

Rule 27, Discipline, reads in pertinent part as follows:

"(a) A train dispatcher shall not be disciplined, demoted or dismissed without proper hearing as provided in this Rule 27. Suspension from service pending a hearing will not be deemed a violation of this principle.

HEARINGS

(b) A train dispatcher charged with, or involved in, an offense which might result in discipline, demotion, or dismissal from the service of the Railway Company, shall within ten days of Carrier's knowledge of the occurrence, be advised in writing of the precise charge against him. Such hearing shall be conducted by the Superintendent or his designated representative within ten days from the date of the notice, or within ten days after the train dispatcher has been suspended from service, whichever date shall be the earliest. . . ."

July 11 was obviously more than ten days following the "occurrence" and was also more than ten days beyond the Carrier's "knowledge of the occurrence" (i.e., the near miss). The Carrier defends the timeliness of its July 11 notification to the Claimant as a principal (rather than as a "witness") by stating that it was not until July 2 or 3 that there was an opportunity to review the tapes of the interchange between the Claimant and the train crew and that it was on this "knowledge" that the revised investigation notice was issued (within 10 days of July 2 or 3).

Rule 27 must be interpreted as written, with the understanding that the parties have mutually agreed to be bound by its terms. There are numerous instances where the notice of hearing limitation goes beyond ten days from the "occurrence" because the Carrier did not have "knowledge of the occurrence (emphasis added)" until some later time. Here, however, the Carrier would extend this beyond the occurrence itself to some point when it developed additional information based on its investigation of the already known "occurrence."

Rule 27(b) simply does not provide for this. The "occurrence," as noted above, was on June 26 and the Carrier had immediate knowledge thereof.

Rule 27(a) provides that a Train Dispatcher may not be disciplined "without proper hearing as provided in this Rule 27." Such "proper hearing" clearly applies to conformance with the requirements of Rule 27(b). Among many instances holding to the same effect is Third Division Award 19275 stating:

"The record is clear that the investigation was not conducted within the 10-day time limitation of Article IX(b). There is no showing that the time limit was extended by Agreement between the Carrier and the dispatcher or his representative, or that the Carrier attempted to obtain such an Agreement. The Board must apply the Agreement as written, and as the procedural requirements were clearly violated by the Carrier, we will sustain

the claim on this basis, without passing upon the question as to the responsibility on the part of the claimant for the accident involved. See Awards 17145, 17081, 14497, 14496, 8714."

An earlier instance of the same reasoning is Third Division Award 6446 stating as follows:

"Express time limitations in grievance procedure have been many times held to be enforceable; primarily because the parties by including them in their agreements intended thereby to expedite the orderly handling of claims. Application of such rules is sometimes harsh but in the interests of efficient, proper procedure they must be applied. We are not granted any discretion to extend such statutes of limitation as the parties have fixed on themselves. We can only apply their own rules. It follows that in so doing we are precluded from judging the merits of the basic dispute. The rule having been violated the claim must be sustained."

Awards cited by the Carrier to the contrary appear to be instances where the Carrier had belated knowledge of the "occurrence" itself and not to information developed following knowledge of the incident.

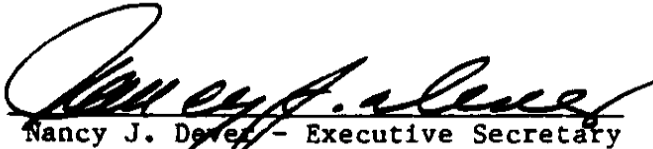
With this conclusion, examination of other procedural matters or the merits of the case is unnecessary.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.