

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29808

Docket No. CL-30631

93-3-92-3-411

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

PARTIES TO DISPUTE: (Transportation Communications International Union)
(CSX Transportation, Inc. (formerly Chesapeake and Ohio Railway Company))

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10812) that:

1. The Carrier violated the terms of the General Agreement and Memoranda thereto when on October 16, 1989, it held investigation on Clerk E. W. Moore, and subsequently assessed a ten (10) day actual suspension against Clerk Moore in connection with her alleged failure to properly perform her duties as operator, Parsons Operator, Columbus, Ohio by not properly lining route for makeup of Train R30108; and,
2. The Carrier shall now compensate Clerk Moore, ID 911501, for ten (10) days actual suspension which was given to her to begin October 12, 1989 through and including October 21, 1989, and shall forthwith clear her record of any and all entries in connection with this matter."

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 employe 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.

Claimant was employed as an extra Clerk at Parsons Yard Columbus, Ohio. On October 11, 1989, she was working as the Parsons Operator when a derailment occurred at power switch No. 39. On October 12, 1989, the Claimant was charged as follows:

"You are charged with your responsibility in connection with failure to properly perform your duty as operator, Parsons Operator, Columbus, Ohio by not properly lining route for makeup of Train R 30108, Parsons Yard, at or about 0915, Wednesday, October 11, 1989, which resulted in derailment of CNW 173784, CNW 174672 and damaged to No. 39 Power Switch."

On October 18, 1989, Claimant was assessed a 10-day suspension for violating Operating Rules 326, 321, and 593.

The Organization argues that the Claimant was not afforded a fair and impartial hearing because the train crew and the Yardmaster were not part of the Investigation. The Carrier is required to have present at the Investigation those employees who have knowledge of the events being investigated. Claimant was working under the instructions of the Yardmaster, who had instructed her to line Power Switch No. 39 for Train R 30108. The Yardmaster was not called as a witness. Apparently, the switch was not lined properly and the train in question ran the power switch. The train crew was not charged or called as a witness. The only witnesses used against the Claimant were the Trainmaster and Signal Maintainer, neither one of which was involved directly in the operation of the switch or the train movement.

Because of the limited amount of witnesses the record is void of any information relating to the movement of the train. Was there a signal to the train crew that the switch was not properly lined for the move in question? Why after the train entered the switch was a reverse movement made which apparently caused the cars to leave the track?

While the record does show that the Claimant did not properly line the track it is void of information that this action alone caused the derailment.

It is the opinion of this Board that Claimant was not offered a fair and impartial hearing when the train crew and Yardmaster were not called as witnesses. We will sustain the claim.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.