

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33980
Docket No. TD-35061
00-3-98-3-815**

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:

“The American Train Dispatchers Department/B of LE, appeals the decision of General Manager Chicago Service Lane J. A. Drake, dated January 22, 1998 to dismiss appellant Train Dispatcher G. L. Golden, in connection with a formal investigation held on January 8, 1998 at Ottawa, Illinois.

This is to respectfully request that Appellant Train Dispatcher Golden be promptly restored to his Train Dispatcher position, his record cleared of the discipline assessed, and compensated for all lost work opportunities.”

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.

At all times material herein the Claimant was assigned as a Train Dispatcher. On December 12, 1997, the Claimant gave DTC block authority in the Ottawa block to Train J738 while the block was still occupied by Train J744. When the crew of Train J744 heard of the Claimant's action, they contacted Train J738 which immediately came to a stop, although not before it had entered the Ottawa block.

On December 20, 1997, the Claimant received notice of the Investigation, which was scheduled for December 18, 1997. However, the Hearing was postponed, at the request of other employees also charged with misconduct, until January 8, 1998 and the Claimant was so notified on December 22, 1997. Following his dismissal, and approximately six months later, the Carrier reinstated the Claimant with full seniority and vacation rights restored, but without backpay, and agreed that he could pursue this claim for lost wages.

The Organization first contends that the claim must be sustained in its entirety because of various procedural violations relating to the notice and timing of the Investigation and the transcript. More specifically, the Organization argues that the claim must be sustained because the Carrier gave notice of the December 18 Hearing on December 20, that it failed to cite specific Rules in the notice, that the Hearing was conducted more than ten days after the incident, and that the transcript of the Hearing was incomplete. In our estimation, although the Organization is correct on each point as a matter of fact, those facts do not compel sustaining the claim. First, since the Hearing was ultimately conducted on January 8, 1998 the late notice of the original date of the Hearing is irrelevant. Similarly, although the charges do not state the precise Rules that the Carrier would consider, there is no doubt that the Notice of Investigation set forth enough information so that the Claimant could prepare an adequate defense. Finally, there is no doubt that the transcript of the Hearing was incomplete because the Hearing Officer inadvertently continued taping testimony over a portion of the tape that had been used earlier. More importantly, however, there is no doubt that the portion of the transcript that does exist contains sufficient evidence to determine the merits of the dispute and the Organization did not contend to the contrary.

On the merits there is no doubt that the Carrier met its burden of proof of the Claimant's misconduct. The record clearly shows that the Claimant failed to correctly repeat the block release and, moreover, he admitted his error at the Hearing. There remains therefore the question of the appropriateness of the discipline meted out. On this point we are required to balance the seriousness of the offense against the

Claimant's record. With regard to his record, we find that although the Carrier provided the Board the Claimants prior record, it failed to do so during the handling of the matter on the property. Thus, we must disregard that information and balance the offense against an otherwise clear record. Accordingly, we believe that a deprivation of six months' wages is excessive and instead believe that a suspension of three months is more in order given the particular facts and circumstances of this case. See, e.g., Award 2 of Public Law Board No. 5675.

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 28th day of March, 2000.