

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37453
Docket No. TD-38002
05-3-03-3-449

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"This is an appeal of Charging Officer, G. J. Kuta, Manager Train Operations, decision dated November 8, 2002 to assess 30 days suspension to Train Dispatcher William H. Branch, Jr. as a result of the formal investigation that was held on October 29, 2002.

In summary, because of the Carrier's violation of the Claimant's due process this discipline should be overturned. It is the position of the Organization that the discipline assessed the Claimant was excessive and discriminatory in nature and should be overturned, the Claimant reinstated with full compensation for all time lost as a result of these charges and his record cleared of any mention of these charges."

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.

The Claimant received a 30-day suspension for directing the crew of Train No. CNIC 7076126 to violate the hours of service (HOS) Act at approximately 5:45 A.M. on September 28, 2002 and for failing to report the situation to his supervisor.

Our review of the record fails to reveal any procedural irregularities of significance. The record contains substantial evidence in support of the primary charge. The matter came to light after an FRA Inspector contacted the Carrier about the HOS violation after the train crew apparently reported the incident to the FRA. A copy of the radio conversations between the Claimant and the train crew, which was cross-referenced with a train operations report showing the times the train entered and left applicable blocks of track, establishes the actions of those involved. The train crew warned the Claimant that they were running out of time and did not believe they could complete the Claimant's movement plan in their remaining time. At one point, the train crew directly asked the Claimant, "I'll be expired on the hours of service there. You're telling us to violate the hours of service, is that correct? Over." To which the Claimant replied, "To clear the crossings, over." Additional excerpts from the radio transcript confirm the situation. The Claimant's failure to report the situation is also supported by substantial evidence in the record.

Given the nature of the Claimant's conduct, we find the disciplinary penalty imposed to have been reasonable.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of March, 2005.