

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19275
Docket Number TD-19450

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Seaboard Coast Line Railroad Company

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the existing Schedule Agreement between the parties, Article IX (a) (b) thereof in particular, by its action in assessing discipline of thirty (30) demerits to Train Dispatcher W. L. Morgan, (hereinafter referred to as "the Claimant") following an investigation held July 23, 1970.

(b) The Carrier shall now be required to compensate Claimant Morgan for wage loss sustained one (1) day July 23, 1970, at trick train dispatcher rate and clear his personal record of the charge which provided the basis for the said investigation.

OPINION OF BOARD: On July 1, 1970, Claimant was notified by the Superintendent:

"You are directed to report to Room 395 at the Seaboard Coast Line Railroad General Office Building, 3600 Broad Street, Richmond, Virginia, at 9:00 a.m., July 7, 1970, for investigation to develop facts, determine cause and place your responsibility, if any, in connection with collision involving Extra 775 South and Extra 1040 North at Bellwood, Virginia, on or about 1:25 a.m., June 29, 1970.

"If representation and/or witnesses are desired you should make necessary arrangements accordingly.

"Please acknowledge receipt by endorsing copy of this letter."

On July 6, 1970, he was notified by the Superintendent:

"Kindly refer to my letter of July 1, 1970, in connection with investigation scheduled 9:00 a.m., July 7, 1970, in Richmond, Virginia, to develop facts, determine cause and place your responsibility, if any, regarding collision involving Extra 775 South and Extra 1040 North at Bellwood, Va., on or about 1:25 a.m., June 29, 1970.

"At the request of Mr. J. W. Hayes, General Chairman of UTU (T), and Mr. M. L. Geiger, General Chairman BofLE, this investigation is postponed and you will be advised later as to rescheduling."

The investigation was conducted on July 23, 1970.

Article IX(b) of the applicable Agreement provides in part:

"(b) Investigations -

"A train dispatcher against whom charges are preferred, or who may consider himself unjustly treated, shall be granted a fair and impartial investigation before the Superintendent, or his designated representative, within ten (10) days after notice of either party."

At the start of the investigation conducted on July 23, 1970, the General Chairman representing the claimant, protested that it was not being held within the time limit specified in Article IX(b).

The objection of the General Chairman as to the timeliness of the investigation was maintained in the course of appeal to the highest officer of the Carrier designated to handle disputes, but, so far as the record before the Board shows, no response was made thereto by the Carrier. In its submission to the Board the Carrier states:

"Carrier submits that because of the desirability that all members of the crews, and their representatives, as well as train dispatching forces, and their representatives, be present at the investigation, and the fact that representatives of the locomotive engineers requested postponement of the investigation, which Carrier felt was a reasonable request, it simply was not possible to hold the investigation within the time limits provided in the Train Dispatchers' agreement."

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.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated to extent shown in Opinion.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.