

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 4042  
Docket Number 3978Referee Irwin M. Lieberman

PARTIES Railroad Yardmasters of America

TO

DISPUTE: The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster G. E. Brower's assessed discipline of five (5) days overhead suspension, as result of investigation held at Camden Station, at 9:17 A.M. on Wednesday, September 3, 1980, be removed and his service record be cleared of any notations thereof.

OPINION OF BOARD: Claimant herein, while working as a Yardmaster at Curtis Bay, was charged with the following:

"You are charged with responsibility in connection with derailment of engine 6457 at Curtis Bay, at approximately 12:01 A.M. on August 22, 1980".

Following an investigation held on September 3, 1980 Claimant was assessed a five day overhead suspension, having been found guilty as follows:

"You have been found in violation of Rule 1401 of the Chessie System Operating Rules in that you failed to inform the 4C crew of tracks out of service and thereby did not provide for the safe and efficient operation of the yard...."

As a preliminary matter, Petitioner raises a series of procedural issues to be considered. First, it is alleged that the charge is imprecise and no rule was included in that charge. This issue has been before this Board on numerous occasions. In this instance it is apparent that the charge was sufficiently precise so as to enable Claimant to prepare his defense. In fact, the charge contains all the necessary elements of specificity: precise information as to what occurred, when it happened, where it happened and his alleged culpability for the incident. With respect to the omission of a particular operating rule, this Board said in Award 3445:

"Charges need not identify the Rules which the Claimant is alleged to have violated...Claimant was adequately advised of the charge, he was not misled, nor was he deceived...."

Among the many awards supporting the proposition that charge was precise and did not require the citation of a particular Rule, see First Division Award 22948 and Third Division Award 20285, among others.

Among the many procedural issues raised by the Organization, particular note must be taken of the allegation that Claimant was deprived of due process and contract protection in the appellate process. Petitioner points out that Superintendent Snyder decided initially the guilt of Claimant, assessed the discipline and also acted as the first appeals officer of Carrier.

The question of the integrity of the disciplinary process in this industry has been the subject of innumerable awards and considerable controversy. In this Board's view if the process is to be accorded any meaning and respect, it must be beyond reproach from the Carrier's point of view: it must contain all the elements of fairness and impartiality in both the investigation and the subsequent appellate steps. This principle is particularly significant with respect to the question of multiple roles played by the Carrier officers. In Second Division Award 7119, the Board stated:

"We have reviewed the conflicting awards cited by the parties on the question of multiplicity of roles by Carrier officers in discipline cases. We continue to adhere to our earlier general opinions that Carrier combines such functions in one individual at its peril... that the greater the merging of roles the more compelling the influence of prejudgment or prejudice and, that each case must turn on its own merits...."

We are here concerned with the import of the officer who rendered the initial judgment of guilt and imposed the discipline, also functioning as the appellate officer. In Award 3747 we said:

"While numerous awards have held that some overlapping of functions in the hearing and decision process is not violative of due process and justice, the inclusion of the appeal hearing in such multiple duties attacks the integrity of the appeal process and denies to the claimant the independent, non-prejudicial consideration required by the appeal process."

The same point of view has been expressed in Awards 3746, 3747 and 3830 of this Board as well as in Second Division Award No. 8898. We wish to affirm this point of view. It is our view that in this dispute Superintendent Snyder, having rendered the initial decisions and imposed the discipline could not, therefore, afford Claimant a fair appellate hearing, as required by the contractual process.

We do not deem it necessary to deal with the other procedural questions, in view of our determination above; further, we may not reach the merits of this dispute; the claim must be sustained.

## FINDINGS:

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

The Carrier and 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.

The parties to said dispute were given due notice of hearing thereon.

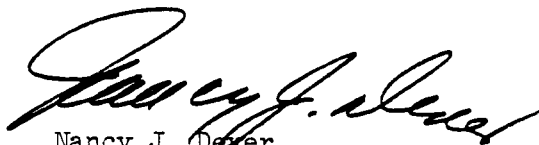
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:



Nancy J. Dever  
Acting Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1983