

Award No. 1

Case No. 1

PARTIES TO DISPUTE:

United Transportation Union/YM

and

Metro-North Commuter Railroad

Statement of Claim

Yardmaster Thomas J. Brennan is claiming eighteen (18) days' pay account of being wrongfully taken out of service violating Rule 231 and then reinstated the day prior to the informal hearing, and record cleared of the charges.

Findings and Opinion

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

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

Claimant, a Yardmaster, was assigned at the Stamford Connecticut Yard on September 26, 1986. At about 9:30 a.m. he instructed Train 1174, William Devlin, Engineer, to use Track 10 and park "just clear

west end, foul the east end." About one-half hour later Claimant instructed Train 1347, Burton Gorman, Engineer, to go through Track 8 to depart the yard. When Engineer Gorman followed these instructions, failing to check the clearance on both sides of his train, he collided with the rear car of Train 1174 which was fouling Track 8. Claimant was withheld from service prior to completion of his shift and was not restored to service for eighteen days. He was restored to service on October 15, 1986, prior to the informal hearing of his case. Thereafter a formal hearing was held and a decision rendered on November 17, 1986 to assess discipline in the amount of time which Claimant had been held out of service.

There are two questions presented by this case. The first is whether Claimant was properly held out of service, and the second is whether the penalty assessed after the hearing was appropriate.

Rule 23(1-b) provides:

When a major offense has been committed, an employee suspected by the Carrier to be guilty thereof may be held out of service pending trial and decision. A major offense is one involving egregious conduct such as abuse of alcohol or drugs, theft or direct insubordination.

Claimant is charged with failing to "properly instruct the crew of Train No. 1347 that Train No. 1174's equipment may be fouling Track #8 on the Hill, contributing to the collision . . ."

The Organization contends that "contributing to the collision" is not a major offense as described in the Agreement while the Carrier contends that Claimant's "involvement in the collision seriously put into doubt his ability to protect the Company's equipment, employees and passengers."

Under Rule 23, a major offense is one which involves egregious conduct. "Egregious" is defined in Webster's Collegiate Dictionary as "conspicuously bad; flagrant" and the Rule gives examples which are consistent with that definition. Claimant is charged with "contributing to the collision", not with causing it, since it is clear that the engineer could have avoided the collision had he seen that he would not clear the fouled car. Accordingly, it does not appear to this Board that Rule 23(1-b) was properly utilized in suspending Claimant from service pending trial on the merits. Rule 23(1-b) should be strictly construed by the Carrier; it clearly was not intended to apply to individuals who were not engaged in "egregious" conduct.

If, as this Board has found, Claimant should not have been suspended from service, was the Carrier justified in its finding that Claimant had contributed to the accident and was the punishment appropriate for the offense.

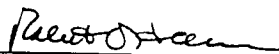
The record indicates that Claimant was less than specific in his directions to Engineer Devlin and while it may be that the terminology which he used was customary, nonetheless he can be considered partially responsible for the misunderstanding which occasioned Engineer Devlin's incorrect parking of the train. Since he was only charged with contributing to the incident, there is sufficient probative evidence to support the Carrier's finding.

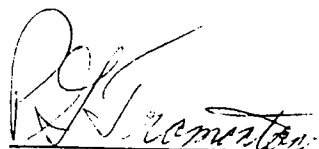
Turning now to the assessment of eighteen days, it is clear that this determination, at least in part, was based upon Claimant's having been held out of service for that length of time. It does not bear any relation to the usual assessment which is based upon a five-day work

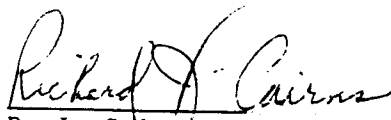
week. Furthermore, at the presentation before this Board, the Carrier in a most forthright fashion indicated that another Public Law Board had reduced to fifteen days the penalty imposed on one of the engineers. This Board does not believe that it should in normal circumstances mitigate the penalty imposed by the Carrier; however, in view of the information furnished to this Board by the Carrier, this Board will reduce the time assessed against Claimant to fifteen (15) days.

Award

The suspension from service assessed against Claimant shall be expunged from his record and the penalty assessed against him for violation of Carrier rules shall be reduced to fifteen (15) days. The Carrier shall comply with this award within thirty (30) days.

  
Robert O. Harris  
Chairman and Neutral Member

  
P. G. Tramontano  
For the Organization  
[Concur / Dissent]

  
R. J. Cairns  
For the Carrier  
[Concur / Dissent]

Dated, \_\_\_\_\_, 1988  
New York, N.Y.