

Award No. 313

Docket No. CRE-2396(D)

Parties Brotherhood of Locomotive Engineers

to and

Dispute Consolidated Rail Corporation

Statement

of Claim: Appeal of engineer T. W. Smith of fifteen (15) days suspension imposed in connection with violation of third paragraph of Rules D and T.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 25, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was notified, under date of October 14, 1980, to attend a formal investigation on October 21, 1980 on the charge:

"Giving false information to the crew dispatcher whereby you used the qualifying list as a subterfuge to avoid working your assignment as engineman on train AMW-4 reporting 6:44 AM at the Wilmington enginehouse on 9/18, 9/19, 9/20, 9/26, 9/27, 10/1, 10/3, 10/4, 10/5, 10/11 and 10/12/80. Which in light of your previous work record is a violation of the third paragraph of Rule D and T of the Conrail Rules of the Transportation Department."

Claimant failed to appear thereat. The investigation was therefore held in absentia. Subsequently, Claimant was advised that he was being assessed discipline of fifteen (15) days suspension.

The Operating Rules cited read:

"Rule D, third paragraph

Any act of insubordination, hostility, or willful disregard of the company's interest will not be condoned.


Rule T, third paragraph

The Employees will not absent themselves from duty or engage a substitute to perform their duties without permission of a division officer."

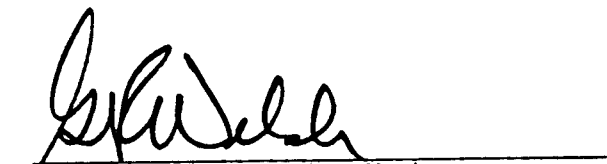
The Board finds that Claimant was accorded the due process to which entitled under his discipline rule, Article G-m-11. He had been duly notified by Certified Mail at the address maintained in the Crew Dispatcher's Rolodex filecard as "Box 362, Perryville, MD." Claimant chose to not attend the investigation. He is bound by the record established thereat. His failure to attend constitutes a waiver of the procedural rights to which entitled under the applicable discipline rule. Nonetheless, the Carrier, of course, has the burden of proving its charge or charges.

Here, the record shows that it had proven such charge. Claimant is bound by that record. It showed CT 803, Daily Work Record of the Claimant, attached as Exhibit C to said transcript that he was not off with permission for the purpose of qualifying. Last, the Employee failed to timely appeal his discipline. In the circumstances, a denial will serve as well as dismissal.

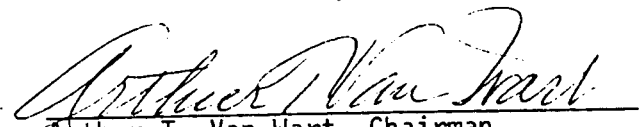
Award: Claim denied.



J. P. Carberry, Employee Member



G. R. Welsh, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member