

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25314
Docket No. 45064
02-1-01-1-G-1720

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Gateway Western Railway Company

STATEMENT OF CLAIM:

"Claim of Gateway Western Railway Trainman Joe Zanti for removal of eight (8) day suspension from personal work record that was assessed on July 31, 2000 in connection with his alleged violation of General Code of Operating Rules 1.6., 1.15-1.16 and KCS Safety & General Rules violations 1.15-1.16 for allegedly refusing a call for MFSKSRN-29 at approximately 1130 on July 30, 2000 and compensation for all time lost as a result of this discipline."

FINDINGS:

The First 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 instant dispute centers on whether the terms of UTU Rule 39(c) were properly followed by the parties in this instance.

"UTU Rule 39, (c)

Employees may be assessed discipline for incidents or rule infractions without a formal investigation. If after review of the incident, the decision is made that discipline is appropriate, it must be assessed within ten (10) days of the incident becoming known to the Carrier. The Carrier will notify the employee and the Local Chairman of its decision and the reasons therefore and, at that time, afford the employee and his/her Local Chairman the opportunity to communicate with the designated Carrier officer to discuss the matter. In cases where discipline is assessed without a formal investigation,

the employee may decline the discipline by requesting such investigation. The request for an investigation must be made in writing to the designated Carrier officer and received with ten (10) days of discipline being assessed. If the request is sent via U.S. Mail, it must be postmarked within the ten (10) day period. Failure of the employee to timely and properly request a formal investigation will be considered acceptance of the discipline assessed and waiver of right of appeal.

Upon request for a formal investigation, the discipline previously assessed shall be void and shall not be considered in the investigation. Any discussion of the discipline prior to the investigation will not be construed as an admission of guilt by the employee or prejudgment by the Carrier. The designated Carrier officer shall schedule and investigation to be held within ten (10) days of the receipt of the request, subject to the provisions below."

On July 31, 2000, Claimant, Trainman Joe Zanti, was assessed a five-day suspension for refusing a call. Under UTU Rule 39(c), quoted above, this is possible without a formal Investigation. This five-day suspension triggered a three-day deferred suspension that was deferred on June 18, 2000. On August 8, 2000, the local BLE Chairman sent the following letter to the Claimant's Supervisor:

"August 8, 2000

Mr. T. Dancy, Jr
Gateway Western Railway
Terminal Superintendent
1700 South 20th Street
E. St. Louis, Illinois 62207

Dear Sir:

In reference to letter sent to Mr. Joe Zanti, from Assistant Trainmaster Mr. Bradly Batson dated July 31, 2000, assessing suspension of eight (8) days.

In accordance with UTU Rule 39(c) revised, Mr. Zanti would like to discuss this and if needed schedule a formal investigation to bring this matter to a conclusion.

Thank you for your time and consideration of this matter.

Respectfully Yours,

I W. Jackson
BLE Local Chairman
E. St. Louis, Illinois"

The record does not contain a response to the Local BLE Chairman's August 8, 2000, letter. The record does, however, contain a statement indicating that the Local Chairman and Superintendent Dancy agreed to hold the issue in abeyance until they both returned from their vacations and a meeting was held on August 31, 2000. In the time between the August 8, 2000 letter and the August 31, 2000 meeting to discuss the proposed suspension, the Claimant was required to take eight-days off by the Kansas City Southern Crew Management. The Organization considered this a violation of the terms of Rule 39(c). It filed the instant claim.

The Carrier denied the claim contending that the August 8, 2000, letter from the Local BLE Chairman to Superintendent Dancy did not make a specific request for an Investigation, as is required by the Rule.

The Board has reviewed the record and has concluded that there was sufficient indication in the August 8, 2000, letter that the Organization desired a discussion and a possible Investigation, in that no discipline should have been administered until at least the discussion was held. The record indicates that was the intent of Superintendent Dancy as well.

The Board has concluded that the Claimant should be reimbursed for wages lost over the eight-day period of his suspension and that the three-day deferred suspension shall remain on his record to the same extent had the discipline subject of this case not been assessed.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 10th day of April, 2002.