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NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25377

Docket No. 45133

02-1-01-1-N-2265

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operation

STATEMENT OF CLAIM:

"Docket No. 01-1-N-2265 appeal of New Jersey Transit Engineer Thomas E. Foran, Jr. from discipline of (15) days deferred suspension.

On Friday, April 6, 2001 at approximately 6:08 pm at South Orange, you failed to obtain permission/ authorization to exceed the maximum hours of covered service while you operated trains 6435, 5713 and x576. You also failed to correctly document on your TRO-Q Form dated April 6, 2001, hours worked and qualifications.

Therefore in connection with this matter you are charged with the alleged violation of: NORAC Operating Rules Q and Special Instructions (GO 501) Q1 and C4.

And that Engineer Foran be exonerated of all these charges and be stricken from his record with pay for all time lost."

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.

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This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As a result of an Investigation held on May 15, 2001, the Carrier assessed the Claimant with a 15-day deferred suspension. The Carrier found that the Claimant had violated the House of Service Act on April 6, 2001, while working as an Engineer.

First, the Board has no authority to determine whether or not the Hours of Service Act has been violated. That authority rests with the Federal Railroad Administration.

The Carrier avers that it proved the Claimant violated the Act. However, the Carrier's General Superintendent of Rules testified to the contrary. The Carrier counters his testimony by arguing his response at the Hearing was not to the actual facts of the Claimant's workday. However, the Carrier's Hearing Officer never clarified this during the Investigation.

The record is void of any evidence from the FRA that the Claimant had violated the Act. There is no evidence that the Carrier was cited for the Claimant's work on April 6, 2001, nor is there any evidence of the Carrier asking the FRA for an opinion.

The Carrier has the burden of proving that the Claimant violated its Rules. The crux of this case is whether the Claimant violated the Hours of Service Act, which is denied by the Claimant. The evidence presented by the Carrier is less than convincing, and as such it has failed to meet its burden.

AWARD

Claim sustained.

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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 5th day of September 2002.