

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT

NO. 227

CONSOLIDATED RAIL CORPORATION

-VS-

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DOCKET NO. CRE-19907-D
CASE NO. 113

CLAIMANT: J.V. Gautieri

FOR THE CARRIER: S.R. Friedman, ~~Assistant~~ Director
Labor Relations

FOR THE ORGANIZATION: Robert Godwin, General Chairman
BLE

NEUTRAL: Dr. James R. McDonnell

EMPLOYEE'S STATEMENT OF CLAIM

Appeal of Engineer J.V. Gautieri, #766498 from the discipline of (30) days actual suspension assessed in connection with the following.

We request Appellant be paid for all time lost, his benefits be restored and the discipline be expunged from his record.

OUTLINE OF OFFENSE

Failure to comply with authorized track speed at approximately 8:53 AM on January 7, 1999 between CP Jersey MP (79.5) and CP Hatch MP (78.0) on the Trenton Line while assigned as the Engineer on ALCA6 on duty at 3:00 AM on January 7, 1999.

FINDINGS OF THE BOARD

The Board, after hearing 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 and has jurisdiction of the parties, claim and subject matter which was held on May 18, 1999 in Jacksonville, Florida. The Board makes the following additional findings:

DECISION

There is a threshold question here which must be dealt with before the merits of the case can be approached. It concerns the matter of time limits for the delivery of the Notice of Discipline.

Article G-M-11 - Discipline and Investigation, in particular (d) (1), and (e) (1), which say, in part:

(d) (1) An engineer directed to attend a formal investigation to determine his responsibility, if any, in connection with an act or occurrence shall be notified in writing within 7 days from the date of the act or occurrence or in cases involving stealing or criminal offense within 7 days from the date the Corporation becomes aware of such act or occurrence. The notice shall contain:

- (A) The time, date and location where the formal investigation shall be held.
- (B) The date, approximate time and the location of the act or occurrence.
- (C) A description of the act or occurrence which is the subject of the investigation and rules which may be involved.
- (D) A statement that he may be represented by his duly accredited representative.
- (E) The identify of witnesses directed by the Corporation to attend.

(2) When a letter of complaint against an engineer is the basis for requiring him to attend the formal investigation, the engineer shall be furnished a copy of the written complaint together with the written notice for him to attend the investigation.

(c)(1) The investigation must be scheduled to begin within 7 days from the date the engineer received notice of the investigation.

On page 8 of the transcript of investigation it says, in part:

MR. SMALE: I would like to put in the record that as of this date, Mr. Gautieri has not received a G-250 or the decertification letter. The address and everything is correct on here, but he has not received either copy.

The Carrier's Notice of Investigation ordered the Claimant to appear on January 19, 1999 while the US Postal Service Receipt for Certified Mail shows the date of delivery as January 27, 1999. The purpose of G-M-11 (d)(1) and (e)(1), is to give the charged employee timely notification but also to provide him with the specifics of those charges outlined in G-M-11 (d)(1) A-E.

In this case, the Claimant showed up for the investigation because he had been verbally notified. Had he not he ran the risk of being charged with insubordination, a risk no reasonable person is likely to take. But, nothing in the record demonstrates that the Claimant knew or understood the specific charges being brought before him.

Arbitral theory and practice have demonstrated repeatedly, including this Board, that the Claimant must be provided with due process. He did not receive same in the instant claim.

AWARD

Claim sustained. The Claimant shall be made whole for any losses incurred. The matter shall be expunged from his employment record.

SR Friedman - DISSENT
S.R. Friedman, ~~Assistant~~ Director
Labor Relations

Robert W. Godwin
Robert Godwin, General Chairman
BLE

James R. McDonnell
Dr. James R. McDonnell
Neutral

October 25, 1999
Date

jdm