

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19890
Docket Number CL-20061

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company (Involving employees
(on lines formerly operated by the Wabash Railroad
(Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7248)
that:

(1) Carrier violated the provisions of the Schedule for Clerks, effective May 1, 1953, when on April 4, 1972, it arbitrarily, capriciously and unjustly assessed a five (5) day penalty against Clerk W. Hardaway, in violation of the provisions of Rule 28 (a) and (d) of the Schedule for Clerks.

(2) Claimant shall now be paid for all time lost.

(3) In addition to amounts claimed above, the Carrier shall pay Claimant an additional amount of one percent compounded monthly.

OPINION OF BOARD: This is a discipline case in which, after hearing, claimant was suspended for five (5) days for negligence in failing to put daily switching bills through for collection on March 21, 1972.

The hearing record shows that, on March 21, 1972, the claimant's supervisor instructed claimant to rate daily switching bills and put them through for collection. The supervisor also told claimant to teach the rating and collection procedures to Mrs. Kovach who was working the vacancy that normally handled the procedures. Claimant instructed Mrs. Kovach on rating the bills, but not on how to put them through for collection. The next day the matter of the "pro numbers" being out of consecutive order was brought to the attention of the supervisor and, as a result, eight (8) bills, representing about \$800.00 in revenue, were determined to be outside the normal procedures. The eight bills were located and returned to normal procedures, but they were not put through for collection that day. The supervisor said that, if the matter had not been brought to his attention, the bills would never have been located and that Carrier would have lost the revenue. However, according to uncontroverted evidence in the hearing record, the "pro numbers" being out of order is the intended, normal indicator that a bill has gotten outside of the normal procedures and that corrective action must be taken. The evidence also established that bills are very rarely put through for collection on the day they are rated and, in many instances, they are not put through in a week.

On this **record** we find that the evidence shows that claimant was guilty of not giving Mrs. Kovach the complete procedures as he was instructed to do. For this we believe an official reprimand was warranted. However, the evidence does not establish **claimant's** guilt on the main charge and we therefore conclude that Carrier was arbitrary and unreasonable in so finding and assessing a five (5) day suspension. It is true that the bills were not put through for collection on March 21, 1972, the date on which claimant received the instructions. **However**, claimant was not told to handle the bills on an expedited basis or otherwise informed that the bills required special handling. He was merely told to put them through for collection. Such being the case, the standard for measuring his performance requires the instructions to be given a reasonable meaning in relation to the overall system and the normal workings of the procedures. By this standard the instructions cannot be taken to mean the procedures were to be completed on the day of the instructions, simply because the procedures did not have that capability. The rating and collection procedures were rarely completed in one day and, in many instances, the bills were not put through for collection in a week. Further, the procedures obviously were planned to deal with occasional snags from human error or otherwise; the evidence shows that all that happened here is that the procedures worked according to plan. When the "pro numbers" were found to be non-consecutive, this signified that some bills were outside the procedures. Corrective action was taken and the bills were put through for collection within the normal time frame. But even with the supervisor in charge of the problem, the bills were still not put through for collection on the day they were retrieved and put back into the **procedures**. **Thus**, Carrier found claimant guilty of not doing something which Carrier's **own** procedures did not have the capability to do. **This** was unreasonable and arbitrary and we shall therefore sustain parts (1) and (2) of the claim. Part (3) of the claim, concerning interest, was not raised on the property and, accordingly, shall be dismissed.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

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Docket Number CL-20061

Page 3

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Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT **BOARD**
By Order of Third Division

ATTEST: *A. W. Pauline*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.