

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21403  
Docket Number CL-21272

William G. Caples, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight **Handlers,**  
( **Express** and Station **Employees**  
(  
(Southern Railway Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-7865) that:

Carrier violated provisions of the agreement on the date of **June 10, 1972, when it unjustly** suspended Claimant Shoaf from service without pay beginning June 6, **1972,** and ending midnight, June 20, **1972.**

For this violation, carrier shall now compensate Claimant Shoaf by **allowing** him his normal earnings for that period suspended, or \$392.48.

**OPINION OF BOARD:** This is a discipline case involving the **Claimant,** E. M. Shoaf, Agent-Telegrapher, who was assigned to work from 8 a.m. to **5 p.m.** with lunch hour **off, Monday** through Friday with Saturday **and** Sunday rest **days, at** a straight time hourly rate of **\$4.46** on the date **of** the initial Claim. **On May 24, 1972,** the Claimant returned from the meal period to his office and was advised by the Clerk **in** the office that a call had been received via radio from the **Engineer** of the so-called Lexington switcher reporting that an intoxicated male trespasser was lying on the ground along side the tracks in the yard and requesting that the city police be notified to remove him. The Clerk notified the **Lexington** police. When Mr. Shoaf, the Claimant, returned from lunch, he was advised that the Engineer had called and given the message to call the police department and have the trespasser **removed** and **that** he had done **so. He** also advised that the police department had called back and told the Clerk that the man **claimed** to have been run over by a train and he had to be **removed** by an ambulance. The **Claimant** then telephoned the Claim Agent's office in Salisbury, North Carolina, seventeen miles south of Lexington, and reported the matter to the Clerk in that office. She in turn relayed the information by telephone to the Claim Agent who then went to Lexington and made an on the ground investigation. The Claimant did not at any time report the matter to the Chief Dispatcher, his immediate supervisory officer, or to the Superintendent at Greensboro, these two men being the proper authority to whom such reports must be sent as **directed** by the applicable operating rules. As a result, the Chief Dispatcher first learned of the incident two days later and at that time belatedly made his report to the Superintendent at system headquarters.

On May 27, the third day after the incident, the Superintendent advised the Claimant to **attend** an investigation on the charge of failure to properly report **alleged** injury to a trespasser at Lexington on May 24 **and** violation of operating rules "IV" and 1151. It **appears** from the record there is little doubt that there was a technical violation of the operating rules. The operating rules are designed with the thought **in** mind that **information** be **relayed** as promptly as possible to the responsible persons with the authority to act in behalf of the management of the railroad. A failure to follow such rules can result **in** considerable liability to the carrier and it is imperative that the rules be strictly followed. They are **designed** with this effect in mind. However, **in** mitigation, it should be pointed out that Claimant, upon receiving the information from the Clerk, did act promptly, although incorrectly, to bring this information to the attention of **management**. However, **it** is the opinion of this **Board** some reasonable discipline should have **been** awarded. **Eleven** days seems excessive **in** view of the **circumstances** and it is the opinion of the Board that to the extent the discipline exceeds **five** working days that such **discipline is to be rescinded and the Claimant made whole in accordance with the provisions of the agreement in such matters.**

**FINDINGS:** The Third Division of the Adjustment Board, after **giving** the **parties** to this **dispute** due notice of **hearing thereon**, and upon the whole record and all the **evidence, finds and holds:**

That the Carrier and the **Employee** involved **in** this dispute are respectively Carrier and **Employee** 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

We **find that** the Agreement was violated to the extent noted **in** the Opinion of the **Board.**

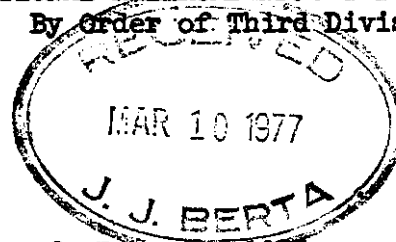
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The **Claimant** is to **be** compensated for his normal earnings for all days **in** excess of **five in** the **suspension** period which began **June 6, 1972** and **ended midnight June 20, 1972.**

ATTEST:

*A.W. Paulos*  
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division



Dated at Chicago, Illinois, this 18th day of February 1977.