

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21526
Docket Number CL-21320

William G. Caples, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7903, that:

1. Carrier acted arbitrarily, capriciously and in an extremely harsh manner when it suspended Mr. J. M. Taylor for thirty (30) days following an investigation held on **February 13, 1974**.

2. Because of this violative act, Carrier **shall** compensate Mr. J. M. **Taylor** thirty (30) days **pay at** the pro rats rate of the position withheld.

OPINION OF BOARD: On February 1, **1974**, Claimant was assigned as a **Stack** Rake Operator at the Phosphate Export **Terminal** of **Carrier at Rockport, Tampa, Florida**. At **2:45 a.m.** an accident occurred **involving Stack** Reclaimer No. 1, which **Claimant** was operating, which resulted in considerable **damage** to the machinery.

By a letter dated February 3, **1974**, Claimant was directed to:

"**Arrange** to attend formal investigation at **9:00 a.m. Friday, February 8, 1974...to develop facts, circumstances and place** your personal responsibility, if any, in regard to your negligence in operating Stacker **Reclaimer** No. 1 at **2:45 a.m. February 1, 1974** which resulted in extensive damage to the South boom caused by your reclaiming phosphate rock while in a stacking wedge.

"**You** may have representation if you so desire in accordance with the agreement under which you are employed **and you may arrange to** have present any witnesses who have knowledge in the matter."

"Your personal record will be reviewed at the conclusion of this investigation.

B. B. Vaughn"

The investigation was actually held on February 13, 1974 at which time extensive testimony was taken. On March 7, 1974, Claimant was verbally notified that he was suspended for sixty (60) days as a result of the investigation; in the appeal procedure the suspension was reduced to thirty (30) days. The case was further reviewed until it reached the highest officer of the Carrier hearing such appeals.

This Board must examine if the Carrier in pursuit of this matter and suspension acted arbitrarily, capriciously or in an extremely harsh manner. In such examination the Board is aware of the nature and reason for the notice and investigation procedure and examines the record to ensure the fairness of the proceeding and that there is substantial evidence to support the action which follows from the investigation.

Claimant argues that the wording of the notice of investigation indicates a-bias and prejudgment of Claimant's responsibility. Although the wording of the notice could be couched in more artful phrases, the charges are specific and precise enough for Claimant to prepare his side of the matter, and there is nothing in the record outside the scope of the notice. The Board does not find it prejudices Claimant's position.

The Organization charges Rule 38 was violated in that Claimant was not notified of the discipline imposed within 20 days. He was advised on the 22nd day, and the record shows the decision had been rendered by the twentieth day; the decision made, which was the discipline imposed upon Claimant under the Rule, Third Division Awards 12001, 12002; First Division Award 16366.

There is considerable evidence that Claimant, an experienced operator, did not properly operate the equipment so as to avoid damage to the equipment.

Claimant was advised in the notice his "personal record" would be reviewed at the investigation, as it was. The Organization argues against this, but this is a matter which may be raised on the property. Third Division Awards 13777, 13086, 15184, 20314, 20263, 16244; Second Division Awards 5987, 6342, 5188.

The record, coupled with precedents of the decisions of this Board, shows the fairness of the proceeding in the case, and there is substantial evidence in the record to support the finding which led to suspension. This Board will not substitute its judgment on such evidence for that of the management.

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 Claimant's suspension of thirty (30) days was not arbitrary, capricious or extremely harsh.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.