

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21713
Docket Number CL-21608

George S. Roukis, Referee

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

PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-3110), that:

1. Carrier violated the Agreement between the parties when on March 8 thru 12, 1975, Clerk L. L. Betz was arbitrarily and capriciously assessed five (5) days actual suspension.

2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed without any proof whatever of the charges made.

3. Carrier shall now compensate L. L. Betz for each day held out of service with seniority and all other rights unimpaired.

OPINION OF BOARD: At 10:08 P.M. on December 29, 1974, Extra East 2918 departed Bellevue Terminal with seven loaded tank cars containing dangerous commodities without waybills. Forty days later the Carrier charged Claimant, another clerk who also worked that night, and the yardmaster on duty with responsibility for the train leaving without waybills. On February 27, 1975, a joint investigation was held with all three charged employees present, after which Claimant and the other clerk were assessed five-day actual suspensions for their responsibility. The claim before us seeks removal of this suspension on a variety of grounds.

We have carefully reviewed the investigation transcript and the entire record of handling given the case on the property and find that while a number of procedural objections were made, these have not been sufficiently developed to make a determination on solely those grounds. Therefore, we will deal with the claim on its merits.

On the issue of merits of the claim, we have carefully reviewed the transcript of the investigation and find that the Carrier made a convincing case only in the one respect that it proved seven tank cars containing dangerous lading were, in fact, included within Extra East 2918 on December 29, 1974 unaccompanied by their waybills. The investigation did not place upon Claimant the responsibility for that failure to include the waybills with those for the remainder of the train. If an employe is to be charged with failure to perform an act; it is insufficient to merely prove the violation occurred. More is required; responsibility for the violation must be established. This was not done in the instant case. The claim will be sustained.

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;

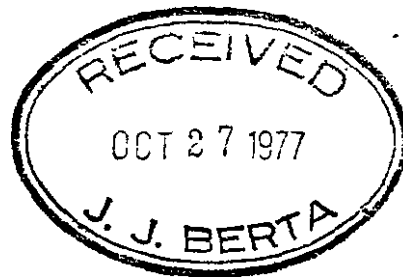
That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

The Agreement was violated.

A W A R D

Claims sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paisley
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.