

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21769
Docket Number MW-21642

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Norfolk and Western Railway **Company**
(Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of Assistant **Foreman** C. A. Lawrence for thirty (30) days and of Yard Cleaner Operator **D. L. Thomas** for ten (10) days was unwarranted and on the basis of unproven charges (**System** File MW-MUN-75-7).

(2) The claimants **shall** now be accorded the benefits prescribed in Agreement Rule 22(e).

OPINION OF BOARD: Claimants were instructed to report **for** an investigation concerning a collision of Yard Cleaner 20839 **and a box car**. Subsequent to the investigation, the Assistant **Foreman** was assessed a thirty (30) day actual suspension and the **Machine Operator** was assessed a ten (10) day actual suspension.

The Claimants deny that they were responsible **and** assert, in defense to the charges, that the sander on the Yard Cleaner was inoperative and that the Operator's vision was obscured.

Our extensive review of the record fails to convince us that Carrier was incorrect when it assessed the discipline, inasmuch as the record justifies a conclusion that the Employees operated in a negligent manner. Both **Claimants** admit that they saw a red signal which governed their movements,, but they did not stop for it. **The** fact that the sander may not have been working - or that vision may have been temporarily blocked - certainly does not negate the admitted "**running**" of the stop signal.

The discipline was based upon **substantial** and credible evidence, and was not unreasonable, arbitrary or excessive.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.

