

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22090
Docket Number CL-22008

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-8338), that:

1. Carrier **violated** the Agreement between the parties, when on the date of September 22, **1975**, Mr. F. E. Keen, 1st trick **Agent-Operator** at Rockwood, Pennsylvania, was assessed discipline of **30** days' actual suspension from service, and

2. Carrier shall, as a result of such action, **compensate** Mr. Keen, eight **(8)** hour's pay **commencing September 22, 1975**, and **continuing** for **all** subsequent dates until restored to his position.

OPINION OF BOARD: Claimant **was** charged with responsibility concerning a **failure** to deliver a train order. Subsequent to **investigation**, he was assessed a thirty **(30)** day' suspension from service.

The evidence shows that a crew was cleared by a train dispatcher with three **(3)** orders and no messages. **The** dispatcher and the Claimant (an Operator) are required to state and repeat to each other **all** of the train order numbers in effect to be delivered to the train; however, both the train dispatcher and the Claimant overlooked one train order (a slow order to look out for maintenance of way forces working on the track on which the **train** operated) and, **thus**, it **was** not delivered to the train.

The train was required to **make** an emergency stop in the slow order area.

The train dispatcher was assessed a ten **(10)** day suspension for his responsibility in the matter.

We do not find that Claimant's rights were prejudiced by the manner in which the investigation was conducted; and we do find that substantive evidence has been submitted to demonstrate Claimant's **culpability**.

It is argued that Carrier's operating rules place equal responsibility on both the Train Dispatcher and the Operator and thus the more stringent disciplinary action against Claimant is inequitable. Nonetheless, it appears that the Claimant was guilty of a number of improper actions. He admits that he failed to "hand on" the order. There were interlineations on the Clearance Form "A"; and he (admittedly) only partially complied with the operating rules. One must presume that the purpose of proper completion of the Clearance Form is to assure that this type of dangerous instance does not occur.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.