

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22193
Docket Number CL-21914

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(**Steamship** Clerks, **Freight** Handlers,
(Express and Station **Employes**
(Chicago and North Western
(Transportation **Company**

STATEMENT OF CLAIM: **Claim** of the **System Committee** of the Brotherhood, GL-8346, that

1. Carrier violated the **Agreement** Rules, particularly Rule 21 (Discipline) when after an investigation was held on April 26, 1971 Mr. Larry Weir, Yard Clerk on the Wisconsin Division, was assessed a 60-day discipline suspension account alleged failure to protect his regular **assignment**, Job 037.

2. Carrier shall clear Mr. Larry Weir's record concerning the suspension, and **compensate** him for all **time** lost account of sane, including any losses in connection with fringe benefits.

OPINION OF BOARD: Following an investigative hearing on April 26, 1971, in which **Claimant** had full opportunity to present his position, **Claimant** was given a sixty-day disciplinary suspension for:

"...responsibility in connection with your **failure** to protect your **assignment** Job 037, Joint Yard Clerk, South **Janesville**, Wisconsin on April 19 and April 20, 1971"

The **Claimant** had been working on Job 037 from March 26 and, upon written **statement** of April 15 that he did **not wish to continue** on this **assignment**, he was specifically directed by two Carrier representatives to **continue** in the position. **Claimant** nevertheless failed to report for such **assignment** on April 19 and 20.

The record shows considerable confusion about job **assignments** and the **Claimant's** job rights at the **time**. Nevertheless, the undisputed finding is that he failed to **protect** an **assignment** for two days as directed, quite **apart from** the contractual provisions which might or might not have applied to continued **assignment** on Job 037.

The Board finds that the Carrier is correct in its **determination** after an investigative bearing that **Claimant** failed to protect an **assignment as directed**. The Board finds, however, **- given the surrounding circumstances -** that the **sixty-day disciplinary penalty** was **excessive**. The appropriate penalty is a thirty-day disciplinary suspension. The **Claimant** is therefore entitled to **be made** whole for loss of pay suffered during the latter 30 days of his disciplinary suspension.

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 **the Agreement** was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1978.

