

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22219
Docket Number CL-22088

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8363) that:

"(a) Carrier violated the Agreement at Asheville, North Carolina, when it suspended Mr. B. J. Parker, Record Clerk from the service beginning November 28, 1975 and ending midnight, December 12, 1975, for alleged responsibility **in** sideswipe and derailment in the Asheville yard at approximately 8:00 p.m., Friday, November 21, 1975.

(b) Carrier shall be required to compensate Mr. **Parker** for all time lost at the rate of \$45.57 per day."

OPINIONCFBOARD: This dispute involves a fifteen-day suspension assessed Claimant **following an investigation.** Claimant had **been** employed, **on** the date in **question, as** a Record Clerk on the **Second** Shift at Carrier's Asheville Yard. *Operating* instructions at the **Asheville** Yard specify that a Yard Conductor desiring to shove a track **must** notify the **Yardmaster** and *secure* permission. The **Yard-**master **contacts** a clerk **in** the Yard Office to ascertain the **number of cars in** the track, and if he deems it safe, authorizes the **conductor** to shove the track - and protects the move.

On November 21, 1975 (and these facts are not in dispute) at about 8:00 **P.M., a** conductor requested permission from **Yardmaster Kitchen** to shove into Track 4. Shortly before this request Yardmaster Kitchen had called the yard office and Clerk Queen had **answered;** Kitchen had requested that some **tonnage** be figured. Almost immediately, after the conductor's request, Kitchen called the office again and this time Claimant answered the phone. Kitchen asked: **How** many cars are in there? Claimant, who had been working on Track 2 responded "fifty cars." As a result Kitchen gave the conductor permission to shove into Track 4 resulting in two cars being derailed and damage to the track occurred as well. Carrier found both the **Yardmaster** and Claimant to be guilty of serious negligence and disciplined both by fifteen-day suspensions.

Petitioner takes the position that the responsibility for the safe operation of the yard is vested in the Yardmaster, not the clerk. Further, it was distinctly the responsibility of the **Yard-**waster in this dispute to determine to whom he was speaking and to clearly advise what information he was seeking. The Organization concludes **that** there is no reason why Claimant should be disciplined because the Yardmaster made several wrong assumptions instead of determining the facts.

Carrier argues that Claimant was culpable **on** two grounds: he did not know which track Kitchen was asking about and didn't seek clarification; secondly, he did not specify which track about which he was giving information. Carrier concludes **that** Claimant was guilty of negligence by giving erroneous information based upon an "assumption" which proved to be false.

It is our considered judgment that both the Yardmaster and Claimant herein were guilty of negligence. Both men operated on erroneous assumptions, a posture that cannot be tolerated in the railroad industry. Both men were guilty of "contributory negligence" at least, and neither can be absolved. We do not accept Petitioner's reasoning. Furthermore, the discipline assessed cannot be termed arbitrary or capricious - it should not be disturbed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

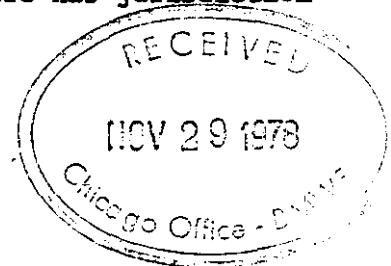
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 15th day of November 1978.