

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22624
Docket Number CL-22301

James F. **Scearce**, 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-8483**) that:

1. Carrier violated the Agreement at Atlanta, Georgia,
June 10, 1976, when it **removed** Ma. Gail **P.** Davenport from service
for an alleged act of insubordination and threat of physical violence
against Supervisor Jean Childs at/or about **2:15** a.m., June 9, 1976.

2. For this violation, Carrier shall be required to
compensate Claimant Gail P. Davenport for all time lost from June 10,
1976 through August 8, 1976, at her daily rate of pay.

OPINION OF BOARD: The Claimant was dismissed from service on
charges of insubordination and a threat of
physical violence over an incident which occurred shortly after
2:00 a.m. on June 9, 1976. Subsequent **review** of the case resulted
in a reduction of discipline to sixty (60) days suspension without
pay. The **Organization** contends the discipline is out of proportion
to the Claimant's fault, if any, in this case; the Carrier considers
its reduction of discipline to sixty days as sufficient show of
leniency.

The Claimant was working the third shift (11:00 p.m. to
7:00 a.m.) as a "Data Processing Typist" when, about 2:00 a.m., she
became ill. She went to her supervisor's desk for the purpose of
securing approval to go home. The supervisor was preoccupied with
other **employees** under her **supervision**. A supervisor from another
area noted the Claimant's apparent ill health and proceeded to
execute **paperwork** necessary for her release. The Claimant's super-
visor, observing the two at her desk came to that spot and inquired
as to the problem. The Claimant apparently did not respond to her
satisfaction. In any case, the paperwork necessary to release the
Claimant was prepared and she turned to leave. The Supervisor heard

her say something **involving** the words "make her sick." She pressed the Claimant for a reiteration of her precise statement; the Claimant disdained to answer but, according to the supervisor said to come outside and she would "show her what she said." More words were exchanged, whereupon the **Claimant** advised her supervisor to leave her **alone** or she would "**knock** her out of the window." The supervisor followed her to the elevator, more words passing between them, and the **Claimant** thereafter left. The supervisor removed the Claimant subject to a hearing. Post the hearing, her **removal** was reduced to a sixty-day suspension.

A review of the record suggests that this incident **was** the result of less than complete **prudence** and good judgment by both the Claimant and her supervisor. The Claimant admits **uttering** the inappropriate reference to **knocking** her supervisor out of the window, but a sufficient showing was made that the supervisor contributed to the tension by her own actions prior to such a **statement**. Nonetheless, the **Claimant's** own actions are not without fault. We shall reduce the disciplinary action to 30 days.

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

The Agreement was violated to the extent that discipline was excessive.

A W A R D

Claim is affirmed to the extent that the **Claimant** shall be awarded pay for half of the **time** held out of service due to **this** disciplinary action.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.