NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22765
THIRD DIVISION Docket Number CL-22764

Joseph A. Sickles, Referee

PARTIES TODISPDTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8673) that:

(1) Carrier violated the Agreement between the parties when it determined that Operator-Clerk E. J. Staley violated Rules F and 108 of the Operating Rules on May 27, 1976, and suspended him from service for thirty (30) days, and

(2) Carrier, because of such wrongful action, shall clear the service record of Mr. Staley in connection with discipline assessed and compensate him for all wage losses suffered during the period June 25, 1976 to July 25, 1976, a total of twenty-one (21) working days.

OPINIONOF BOARD: An engine traveling east from Newark, Ohio struck a Maintenance of Way Tamper in the immediate vicinity of Zanesville, Ohio and as a result, the Carrier notified the Claimant to attend an investigation concerning responsibility, if any, in connection with that incident.

The Claimant - an Operator/Clerk - was notified, subsequent to the investigation, that he was assessed a discipline of thirty (30) days suspension for assertedly failing to take appropriate action when he was advised of a discrepancy in work authority and that he failed to notify the Train Dispatcher of the discrepancy.

While we have considered the procedural objections stressed by the Claimant, our determination of the case on its merits makes it unnecessary for us to comment upon those asserted procedural deficiencies.

The Carrier urges that the record demonstrates that on two occasions the Claimant was aware of an error in the working limits of the Maintenance of Way Crew, but he did not inform the appropriate Train Dispatcher.

Unquestionably, Operating Rule F does require employes to promptly report accidents or any unusual conditions, and Operating Rule 108 directs employes to always take the "safe course" in case of doubt or uncertainty,

The Board certainly does not, in any manner, condone an employe's ignoring of a valid Safety rule, nor do we ever feel it advisable to permit an employe to take action inimical to the safety of others. But, the fact remains that in this particular case, the Board has difficulty in finding that the Carrier presented evidence to show that the Claimant was, in any manner, culpable concerning the accident. It does appear that the Carrier charged the accused with an offense of not having certain advance knowledge - which was not really explored. Nor do we understand the basis for a finding that his action, or inaction, led to or assisted in the unfortunate accident.

After a thorough review of the record, we are inclined to sustain the claim.

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 apprwed June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.