

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DMSICN

Award Number 23019
Docket Number CL-22814

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of
the Brotherhood (**GL-8709**) that:

Carrier violated the Agreement when it unjustly suspended
E. L. Miller, Agent-Operator, Harriman, Tennessee, from
the service of the Company, commencing November 7, 1977,
and ending November 13, 1977, a period of 7 days.

For this **violation**, the Carrier shall now compensate
Claimant Miller by paying him for **all** time lost as a
result of this unjust discipline."

OPINION OF BOARD: Claimant, E. L. Miller, after investigation, was
suspended for seven days for failing to properly
perform his duties as Agent-Operator in Harriman, Tennessee. The **thrust**
of the charge against Claimant is that he failed to properly set the remote
control **signal** in a stop position to hold L & N Extra **1549** South. L & N
Extra **1549** South struck Inspection Car No. 3528 on October **17th**, 1977.

The Organization contends that Assistant Track Supervisor,
F. E. Roberts, caused the collision by taking more than the **35 to 40**
minute time allocated to make his run. Therefore, it insists that
Claimant was not responsible for the accident and should be reimbursed
for the period of his unjust suspension.

An analysis of the record conclusively establishes that
Claimant is guilty of failing to properly perform his duties. That **is**,
the record indicates that Claimant is responsible for the collision.

Claimant was asked during the investigation whether he intended
to hold L & N **Extra 1549**. He responded,

"**Yes** sir. I **wasn't** intending to let him go
until I heard from him (Roberts). But I
forgot him" (emphasis added).

This statement clearly establishes that Claimant did, in fact, intend to hold the train. The failure to do so was due to Claimant's omission - he forgot about Roberts.

Claimant's action was completely inappropriate and subjected him to appropriate disciplinary action. Given the seriousness of the proven offense, the imposition of a seven day suspension was not unreasonable. As such, we will deny the claim in its entirety.

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 Employee involved in this dispute are respectively Carrier and Employee 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:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.