

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23132
Docket Number CL-22807

Martin F. Scheinman, 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 (CL-8720) that:

Carrier violated the Agreement when it unjustly suspended
Mr. J. G. Starr, Clerk-Operator, **Macon, Georgia**, from the service
of the company, **commencing** July 16, 1976, and ending August 14, 1976,
a period of 22 work days.

For this violation, the Carrier shall **now** compensate **Claimant**
Starr, Clerk-Operator, **Macon, Georgia**, by paying him **for all time** lost
as a result of this unjust discipline.

OPINION OF BOARD: Claimant, **J. G. Starr**, after investigation, **was**
suspended from service from July 16th, 1976,
through August 14th, 1976. At the time of this dispute, Claimant was
a Clerk-Operator **in** Macon, Georgia. **The** suspension was issued for
Claimant's negligent performance of his Clerk-Operator **duties** on
June 22nd, 1976.

On June 22nd, 1976, Train Dispatcher, J. D. Fields, issued
Train Order **No. 33**. **The** order was issued by telephone to Claimant
and **Agent-Operator, Eloise Keiser**, at **Conley, Georgia**. **It is undis-**
puted that both Keiser and Claimant repeated the order and that no
exception was taken to the repetition by **Kaiser**, Fields **or** Claimant.

The dispute arises over **which** of two trains, **number 124** or
143, should take the siding at **Juliette, Georgia**. Fields **testified**
that the order he issued stated that Train No. 124 should take the
siding. The dispatcher's book corroborated Field's testimony.
Keiser stated that she heard **Fields state** that Train **No. 124** should
take the siding. She copied the order **indicating** that Train **No. 124**
should take the siding.

The order copied by Claimant at Macon, Georgia differed from the order copied by Keiser and the order in the dispatcher's book. It indicated that Train No. 143 should take the siding. Claimant testified that he wrote that order. He stated that, "I believe I actually heard what I put down".

On June 22nd, 1976, Train No. 124 was traveling north on the main line between Macon and Atlanta. Train No. 124 was operating on the authority of Train Order No. 33 which had been issued to it at Macon. When Train No. 124 arrived at Juliette, the crew held the main line as its copy of Train Order No. 33 indicated that Train No. 143 would take the siding. Train No. 143 arrived expecting to find Train No. 124 on the siding as stated in Train Order No. 33 issued to the crew at Conley, Georgia.

The train crews compared orders and a crew member of Train No. 124 called the dispatcher for directions. The dispatcher changed the order and had Train No. 143 go first on request of the crews.

Trainmaster E. G. Tuenge discovered that the order obtained from Train No. 143 coincided with the order as written in the dispatcher's book. Tuenge also discovered that the order held by Train No. 124 did not concur with the order written in the dispatcher's book.

Fields, Keiser and Claimant were all cited to an investigation by Superintendent W. M. Westerman. The letter stated:

"The purpose of this investigation is to develop facts and place responsibility, if any, in connection with discrepancy in issuing and/or copying Train Order No. 33 dated June 22nd, 1976."

The suspension of Claimant resulted from this investigation.

The Organization contends that Claimant was improperly disciplined. It asserts that Claimant wrote down the orders as he heard them. Claimant then repeated these orders as he had written them and neither Fields or Keiser took exception to Claimant's repetition of this order. In the Organization's view, the problem that arose is due to the fact that Keiser and Fields were careless in performing their duties because they did not notice the problem with the order when Claimant repeated.

The Carrier, on the otha **hand**, argues that the **discipline** imposed is appropriate. **It** asserts that **Claimant's error was serious and could have resulted in serious** consequences **had the crews** not reacted quickly **enough** to avoid a collision.

An analysis of the transcript leaves little doubt that **Claimant is guilty as** charged. Clearly, he is **responsible** for the **incorrect** orda that was given to **Train No. 124**. As between Fields, Keiser end **Claimant, Claimant** must be held accountable.

While we are **cognizant** of the fact that there is a high level of noise **in** the offices and that **there** are sometimes **inter-ruptions** on the telephone line, we are **nevertheless** persuaded that **Claimant should have properly heard the order and should have re-**recorded the order proper⁴. **After all**, the evidence established that Keiser, who was **similarly** situated to Claimant, heard the order and recorded it properly.

Moreover, the fact that neither Fields or **Keiser** took exception to the way **in** which **Claimant repeated** the order, **does not immunize Claimant**. **On the contrary**, given the testimonies of **Keiser** and Fields, it is probable that Claimant repeated the **order** proper⁴ but copied It **incorrectly**.

In any case, we are **convinced** that **Claimant is responsible** for the discrepancy in **handling** the order. **Claimant's** action subjects **him to appropriate disciplinary action**.

The final **question** that remains is the appropriate **discipline**. This **Board has repeatedly determined** that it will **not substitute** its **judg-**ment for that of **Carrier's in meting out discipline**. However, when the **discipline is arbitrary, capricious a unreasonable**, we will set it aside.

Has, given all of the **surrounding circumstances**, and the fact that Claimant in his **over 25** years of service has **never** been **disciplined** or cited for investigation, we are **convinced** that a 30 day suspension is excessive. **Instead**, we believe that a Letter of Rep-
rimand should be issued to Claimant for mishandling the order. This will have the desired effect of assuring that **Claimant** understands the **import-**ance of **properly handling orders and placing Claimant on notice of the** potential disciplinary consequence⁶ for future improper action.

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; end

That the Discipline was Excessive.

A W A R D

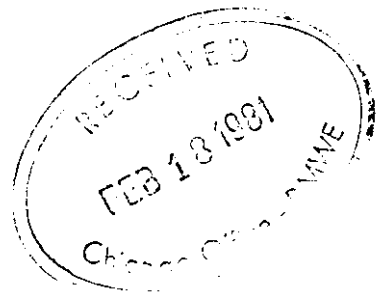
Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.



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DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 23132, DOCKET NO. CL-22807
(Referee Scheinman)

Award 23132 finds correctly:

"An analysis of the transcript leaves little doubt that Claimant. is guilty as charged. Clearly he **is** responsible for the incorrect order that was given to **Train No. 124**. As **between** Fields, Keiser and Claimant, **Claimant** must be held accountable."

"Moreover, the fact that neither Fields or Keiser took exception to the **way** in which Claimant repeated the order, does not immunize Claimant. On the contrary, given the testimonies of Keiser and Fields, it is probable that **Claimant** repeated the order **properly** but copied it incorrectly."

"In any case, we are convinced that Claimant is responsible for the discrepancy in handling the order. Claimant's action subjects him to appropriate disciplinary action."

Upon reaching the foregoing conclusions the case is closed, right? Wrong.

This "Opinion of **Board**" continues:

"The final question that remains **is** the **appropriate** discipline. **This** Board has repeatedly determined that it will not substitute its judgment for that of Carrier's in **meting** out discipline. **However, when** the discipline **is** arbitrary, **capricious or** unreasonable, we will set it aside."

"Hen, given all the surrounding circumstances, and the fact **that** Claimant **in** his over **25** years of service has never been disciplined or cited **for** investigation, we sre convinced that a 30 day suspension is excessive. Instead, **we** believe that a Letter of Reprimand should be issued to Claimant for mis-handling the Order. This will **have** the desired effects of

assuring that Claimant understands the Importance of properly handling orders and placing Claimant on notice of the potential disciplinary consequences for future improper action."

Here, **an** employee is found responsible for Incorrectly copying a train order which could have caused a collision between two trains. In fact, it **is** stated in the record **that** the train crew of Rains **124** and 143 acted quickly enough to avert a collision. **Collisions can**, and do, result **in** personal injury, death, multi-dollar equipment and merchandise damage, all of which were potentially possible in this incident. Proper handling of train orders is extremely important for the safe movement of trains. Mishandling of train orders is a most serious offense and could cause a serious accident. Because of the seriousness of this offense, this Carrier could not be considered to have been arbitrary, **capricious** or unreasonable **when**, following proven responsibility, Mr. Starr **was** disciplined in the amount of **a** thirty (30) day suspension from service. Yet, in these circumstances, in its "Opinion Of **Board**" it is determined **that a** thirty (30) day suspension from service **was** "excessive." **How** could this Board determine that: "**Claimant** in his over **25** years of service has never been disciplined or cited for Investigation, **we** are convinced that e 30 day suspension **is** excessive." The error here is of such grave import that once responsibility of an

employee **is** established the seriousness of Incidents of this nature **usually** requires dismissal of the employee found responsible, and Mr. Starr **was** found responsible in this case.

The **discipline** assessed in this case **was** levied by this **Carrier** only after serious consideration **was** given to Mr. **Starr's** record of twenty-five **(25)** years of **service** during which he had not been disciplined or cited for Investigation. Without **that** unblemished record Mr. Starr **would** have been given a more drastic and severe amount of discipline. **The** amount of discipline issued obviously **was** tempered by Mr. **Starr's** prior record. For this Board to further reduce the **discipline is palpably** erroneous.

This Board cannot substitute its judgment for **that** of the Carrier **in** imposing discipline **when a** finding of **violation** is based on substantial evidence where it is not shown that the Carrier acted in an **unreasonable, arbitrary or** discriminating manner amounting to **abuse of discretion**.

This Carrier **cannot** rightfully be accused of **abuse** of discretion when Mr. Starr **was** assessed a very **minimal** thirty (30) day **suspension**.

As stated in this Division Award **18036**: "Long years of good and efficient service **may** be mitigating circumstances only when there **is** doubtful issue of guilt and when the penalty **is** too severe for the committed offense."

Neither of these **apply in** this case.

Awards of this division - 11769, 13704 state in pertinent part: "Years of

service do not give **an** employee a license to violate • stsbllshed rules for personal safety, or the **safety** of others."

Asso aptly stated in **Award 16005** of this Division: 'Moreover, **Carrier** already has considered mitigating circumstances, such es Claimant's 22 **years** of service **with** Carrier."

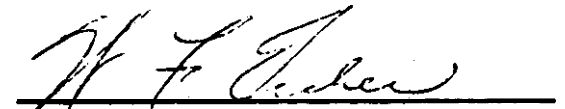
Third Division Award 16239: "It appears that the Carrier, in **considera-**
tion of the Claimant's relative inexperience, reduced the discipline
Imposed from dismissal to **time** lost."

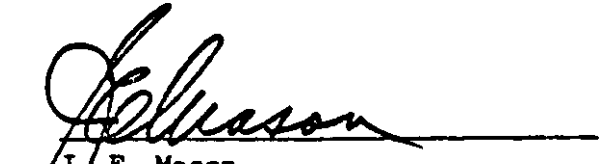
Furthermore, es **stated** in this Division Award **11803**: "It is 8 well es-
tablished principle of this Division 'that **a disciplinary action will**
not be set aside unless the **Carrier was** vindictive, arbitrary or acted
in bsd **faith'**. It **is** also the position of this **Board** that **we cannot** sub-
stitute our judgment for the Carrier. Awards 11017, 11324, 11531 (**Dolnick**),
10642 (La Belle), 10595 and 10596 (Hall) among **many** others."

here, this **Board** obviously substituted its judgment for that of the Carrier
when it decided that the discipline assessed by the Carrier **was** excessive.
This Board did not have that right.

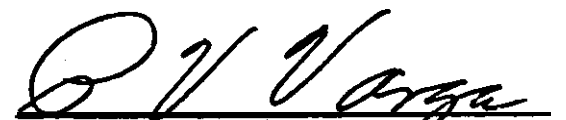
Hence this dissent.


P. E. La Cosse


W. F. Euker


J. E. Mason


J. R. O'Connell


P. v. Varga