

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23162**
Docket Number **CL-23213**

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8908)
that:

(1) Carrier violated the Agreement between the Parties when it determined that Agent-Operator F. G. Thompson was at fault for failure to deliver a train order on October 11, 1977, and suspended him from service for thirty (30) days, and

(2) Carrier, because of such impropriety, shall clear the service record of Mr. Thompson in connection with charges and discipline assessed, and compensate him for all wage losses suffered during the thirty (30) day period he was suspended from Carrier's service.

OPINION OF BOARD: On October 12, 1977, Carrier advised the **Claimant** to attend an investigation concerning a collision. Subsequent to the investigation, he was assessed a 30-day actual suspension.

The Claimant was first-tour Agent-Operator at **WN Tower, Carven,** West Virginia, on October 11, 1977, and Train 46, traveling east **from Carven,** struck Maintenance of Way track machinery and 3 poles. 2

Certain procedural issues have been raised, but our decision on the **merits** of the case makes it unnecessary for us to **comment** on those assertions. 2

A review of the record on the merits shows that the Issue centers around an alleged failure by the Claimant to deliver Train Order No. **202** to the crew of train **46**. The **Employees** insist that a "**Clearance** Form A" was completed and delivered to the train crew, and was taken **from** the Conductor after the collision. The form properly showed the total number of train orders and messages.

We have considered, at length, the varying assertions of the parties, and we **have** focused upon train crew assertions that it did not have Train **Order** No. 202. Certainly, we cannot account for the total disparity, nor can we resolve the disagreement in all aspects. But, our role in this case is limited to assuring that Carrier has presented substantive evidence to establish its charges against this **employee**. **We feel that** it has not, and we will sustain the claim because of a failure of the record to show evidence to establish that the Claimant failed to deliver the order.

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 approved 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 30th day of January 1981.