

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 23455
Docket Number CL-23097

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station **Employees**
{ Chesapeake and Ohio Railway **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-8858)
that:

(a) That the Carrier violated provisions of the Clerks' General Agreement and Supplements thereto when on **Monday, June 21, 1976**, they arbitrarily administered discipline of thirty (30) days actual suspension to **Operator T. L. Waggoner** in a Board of Inquiry.

(b) That the Carrier now be required to rectify this act by the **removal** of **all** discipline from Operator T. L. **Waggoner** Service Record and **make** such record clear, and that Operator T. L. **Waggoner** be **compensated** for **eight** (8) hours pay for each and every day of the above mentioned thirty (30) days to include holiday pay and **all** overtime pay that Operator T. L. Waggoner would have earned.

OPINION OF BOARD: On June 4, 1976, **Claimant** was assigned to the (Operator's position on the 12:00 Midnight to 8:00 A.M. shift at NJ Cabin in Carrier's yard at Sciotoville, Ohio. At approximately 4:40 A.M. on said date a **Vaues** Turn **train** crew, which was in the process of picking up 131 empty cars, encountered **some** difficulty in effectuating this move while in the vicinity of Mile Post CN-3. Said difficulty, together with **various** related activities which occurred subsequent thereto, resulted in the **derailment** of two (2) of the train's empty cars.

Pursuant to said incident, an investigation was conducted in which Claimant was found "at fault for failure to repeat and understand verbal instructions affecting train **movement** . . . in violation of Rule K . . ." As a result of this determination, Claimant was assessed a thirty (30) day suspension which is the basis of the instant **claim**.

Although Organization has alleged several procedural errors on the part of Carrier in the handling of **this** matter, the Board is unable to ascertain any irregularity of a sufficiently **serious nature** which would have **been** materially prejudicial to **Claimant's** substantive rights (First Division Awards 15370, 16483, 17007, Second Division Award 4981, Third Division Awards 11170, **12243**, 13674, 14272, 15055, **16121**, 16172, 16268, 20423 and 21228). **Thus**, the **resolu-**tion of this matter turns exclusively upon the **merits** of the case itself, and in this regard Organization contends that Carrier has failed to sustain the charges which have been leveled against Claimant; whereas Carrier contends that said charges were fully supported by substantial evidence and that the discipline which was assessed was neither too severe, arbitrary or capricious.

The Board has carefully read and studied the complete record in this dispute and is convinced that, while Claimant cannot be held solely responsible for the derailment which occurred on the morning of June 4, 1976, he was, nonetheless, partially responsible for the incident and his "contributory negligence", therefore, cannot be absolved (Third Division Award 22219).

There can be no doubt that Claimant, through his assignment, was playing a critical role in the train movement which was being undertaken. Despite this fact, however, despite the fact that the weather condition at the time was "dark and foggy" (Tr. p. 7), and despite the fact that Claimant was already aware that the train crew had experienced difficulty in completing the disputed move (Tr. pp. 20-21), Claimant, by his own admission, did not attempt to confirm or clarify ("repeat and understand") various messages which were either directed to him or which he himself was initiating. Moreover, Claimant, again by his own admission, made various assumptions regarding the movement which not only demonstrated extremely poor judgement on his part, but also which were erroneous, and thus contributed to the derailment itself.

Given the inherently dangerous nature of the railroading industry, such assumptions, whether or not they produce calamitous consequences, are improper, and when detected, Carrier is certainly entitled to exercise appropriate disciplinary action against the responsible party/parties. Such was the case in the instant matter and, insofar as the penalty which was assessed was neither arbitrary or capricious, Carrier's action herein shall remain undisturbed.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.