

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23858
Docket Number CL-23906

T. Page Sharp, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9380) that:

1. **Carrier** violated the Agreement between the parties when on **April 24, 1979**, they **arbitrarily and** capriciously assessed **Clerk** C. A. Eckelberry fifteen (15) days deferred suspension.

2. Carrier's action was **unjust**, unreasonable and an abuse of Carrier's discretion. The **discipline was** assessed after the **hearing clearly disproved** the charge.

3. Claimant's record shall be cleared of this charge and Carrier shall compensate Ms. Eckelberry for all time lost as a result of their arbitrary action.

OPINION OF BOARD: Claimant, C. A. Eckelberry, held the position of operator-clerk "RU", Lorain, Ohio, when she was notified that a truck hauling a 30 foot sailboat was stalled and the sailboat was on the main line of the Norfolk and Western Railway Company at the Beaver Park Road crossing at Lorain, Ohio. Subsequently train 72 SLT hit the sailboat at the crossing resulting in some personal injury and extensive property damage. Claimant was charged that:

"You are hereby charged with your failure to notify the crew on the 72 SLT Engine NW 1522, that a Sailboat on a trailer was obstructing the NW Main track at the Beaver Park crossing Lorain, Ohio on May 26, 1979 after you were notified by telephone of such obstruction at approximately 640 A.M. May 26, 1979 while you were performing service on the 3rd trick position of operator-clerk, RU office, brain, Ohio assignment commencing at 1159 P.M. May 25, 1979, resulting in property damage and personal injury."

A thorough investigation was held and as a result Claimant was assessed with fifteen days deferred suspension.

While this case was pending at the National Railroad Adjustment Board, Public Law Board No. 2916 decided the petition of the Brotherhood of Locomotive Engineers on behalf of Engineer I. L. Zapitella, who had been the engineer on

train 72 SLT when the accident **in** question occurred. The **Public Law Board** decided **against the claim of Mr. Zappitella** and stated:

"Our review of the record convinces us that on the date of the incident, the **Claimant** had knowledge that the **crossing** was blocked. In spite of the short notice, and the fact that the messages may have been, **to** some extent, distorted (but he did respond), Claimant had sufficient **time and distance to** stop short of the **collision.**"

Based on the doctrine of **collateral estoppel** this Board accepts the fact the Engineer **I. L. Zappitella** had been notified.

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 violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.

