

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24302
Docket Number CL-24392

Robert Silagt, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9531)
that:

(1) Carrier **violated** the terms of the Agreement **in** effect between the Parties, when, on April **18, 1980**, it imposed discipline of **5** days suspension from Carrier's service upon Yard Clerk Edwin V. Wilder as a result of investigation held April 11, **1980, and**

(2) As a result of such impropriety, Carrier shall be required to reimburse **Claimant** E. V. Wilder for lost wages in connection with his suspension from Carrier's service, April **26** through April 30, **1980**, and that his record be cleared of charges and discipline in connection therewith.

OPINION OF BOARD: Claimant, a Yard Clerk with **six years** of seniority, **was** charged with the improper preparation of a data card and consist incorrectly identifying a **"restricted"** multi-level auto hauler as an "unrestricted" multi-level **car**. The equipment was dispatched as "unrestricted". The car struck a bridge causing approximately **\$4,000** in damages to the car. An investigation was **conducted** after which **Claimant was** found guilty of the charges and suspended for **5** days. **Claimant** contends that he was not afforded a fair and impartial hearing and that the discipline was excessive.

The **record** discloses the following undisputed facts:

Claimant was served with written charges. He appeared at the investigation and was represented by the Organization. He had sufficient time to prepare a defense; opportunity to produce and examine evidence; opportunity to produce, **examine** and **cross-examine** witnesses, all of which he utilized. Accordingly, the Board finds **that** the elements of a fair and impartial investigation mandated by Rule **47** were met.

At the investigation Claimant testified that he had much experience, **almost** daily, with **over-sized cars**. that he knew the procedure for the preparation of data cards, consist and clearance instructions of **multi-level** or over-sized equipment. Nevertheless **Claimant** had no explanation for his error. As a result of the improper identification of the car it **became** involved in an accident causing it substantial damage.

This Board holds that the record fully supports the finding that Claimant did not carry out the duties of his **assignment** and further that his negligence resulted in a **serious** accident.

With regard to the discipline imposed, the Board is of the opinion that, under all the circumstances, it is not excessive. The claim is therefore denied in all respects.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

