

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24599**

Docket Number CL-24841

Robert Silagi, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight **Handlers**, Express and Station **Employees**

**PARTIES TO DISPUTE:** (

(Central of Georgia Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(CL-96601 that:

Carrier violated the Agreement at Augusta, Georgia, when on October 11, 1980, it dismissed Claimant R. L. **Lowery**, Clerk-Operator, from service for an alleged violation of Operating Rules 218, **211(b)**, and 801.

For this violation, Carrier shall be required to compensate Claimant **Lowery** for all time lost, beginning on October 11, 1980, and continuing until he was **subsequently restored** to service.

**OPINION OF BOARD:** Claimant worked at the Augusta Yard, Augusta, Georgia.

His tour of duty on October 3, 1980, began at 11:00 p.m. and ended at 8:00 a.m. the following day. H. P. Smith, a clerk-operator trainee was assigned to work with and under the supervision of claimant as part of a training program. Claimant and Smith were **expecting** to receive a train that would depart from Augusta Yard as Extra 2583. Claimant, assisted by **Smith**, made up a clearance card and the necessary orders for the train to operate as Extra 2583. **However**, said train arrived late and the orders were changed for it to operate as First/137 departing at 6:20 a.m. It therefore became necessary to make a **change** in the clearance card and to add one additional Train Order No. 20, which had been issued at 4:13 a.m., giving Train No. 20 right over Trains 137 from **Millen** to **Waynesboro**.

At about 5:00 a.m. on October 4th, General Yard Master **Siders** ordered claimant to deliver a piece of equipment to Nixon Yard, some 10-11 miles distant from Augusta. At about 5:15 a.m. Claimant departed on this errand. At 5:26 a.m. Smith prepared the proper **clearance** card for Train **First/137**. During Claimant's absence Smith delivered the **necessary** papers to the crew of Train First/137 but neglected to include Train Order **No. 20** which gave Train No. 20, an **opposing** train on **the** same track, right over Train **First/137**. At about 6:15 a.m. **claimant** returned to Augusta Yard. **Claimant** spoke to the crew of Train First/137 but **failed** to check the clearance card and train orders. Train First/137 departed with its crew **unaware** that Train No. 20 on the same track proceeding in an **opposing** **direction** had the right over Train **First/137**. **Fortunately** a head-on collision **was** averted **when** the engineer of Train First/137 sighted the **headlight** of Train **No. 20** in **sufficient** time to stop.

A formal investigation hearing was held at which both claimant and Smith were charged with violating operating rules. Both were found guilty and dismissed from service as were a Dispatcher and another Clerk-Operator trainee who were involved in this incident. Claimant was reinstated to service on March 31, 1981 **"on** a leniency basis, with seniority and vacation rights unimpaired".

The Organization's position is that claimant quite properly followed his superior's orders in delivering equipment to Nixon Yard as a consequence of which he was absent from the Augusta Yard when the papers were delivered to Train **First/137**; that claimant was punished for another's **error**; that the burden of proof rests squarely on the Carrier; that **Carrier** failed to sustain **that burden and that** claimant's **conviction was** predicated upon suspicion, surmise and uncorroborated circumstantial evidence.

Carrier's position is that claimant knew of the existence of Train Order No. 20 and the necessity to furnish the crew of Train **First/137** with a copy thereof; that claimant's excuse for not checking the physical **delivery** of Train Order No. 20 to the crew of **First/137** was because he assumed that it was present; that claimant admitted his responsibility to supervise a trainee under his jurisdiction.

There is no doubt that in a disciplinary case the burden of proof rests with the Carrier. The transcript of the formal investigation clearly establishes that Carrier sustained that burden. Indeed, the transcript shows that Claimant admitted not verifying the delivery of **Train** Order No. 20 to the crew of **First/137** because Claimant "assumed **that it [Train Order No. 20]** was already there". Likewise Claimant admitted knowing his responsibility **vis-a-vis** his trainee.

That another may have initiated the error does not make Claimant blameless (Award **15978-Engelstein**). In view of Claimant's own admissions it **cannot** be said that Carrier acted upon suspicion, surmise and uncorroborated circumstantial evidence.

We turn now to **the** severity of the discipline. Claimant was dismissed **in** October 1980. Standing alone the penalty of dismissal would have been unreasonably harsh. However, Carrier saw fit to reinstate claimant **5 1/2** months later. This Board has often said that **it** will not reverse or **modify** the discipline unless Carrier acted in an unreasonable, arbitrary, capricious or discriminatory manner (Award **14700-Rohman**). A **careful** review of the record shows that **Carrier** did not abuse its discretion hence there is no reason to **modify** the discipline. The claim **will** therefore be denied.

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 **Employee** within the meaning of the Railway Labor. 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:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.