

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24602
Docket Number NW-24880

Robert Silagi, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The discipline ("10 days deferred suspension and disqualified as Machine Operator for a period of one year") imposed upon Machine Operator G. Anderson was without just and sufficient cause (System Docket 680).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant entered Carrier's service in April, 1978 as a **Trackman** and was awarded the position of Machine Operator two years later. On May 13, 1980, an incident occurred which resulted in the following charge against the claimant.

"The alleged destruction of Conrail derail pipes on Jamesburg Branch with **Scafier #VR 1509** on May 13, 1980 at approximately 1:00 P M which resulted in inability to throw any switches on **Jamesburg Branch.**"

Following the hearing on the charge claimant was assessed discipline of ten days suspension and was also disqualified as a Machine Operator for one year. Shortly thereafter the suspension portion of the discipline was reduced to ten days deferred suspension but the disqualification remained unchanged.

The Brotherhood raised various objections and defenses which will be dealt with below.

1. Claimant was not charged with a specific violation of any operating or safety rule.

An analysis of the charge discloses that it meets the tests established by this Board, namely to "reasonably **appraise[s]** the **employe** of the set of **facts** or circumstances under inquiry to provide an **opportunity** to prepare a defense and prevent surprises . . ." (Award 12255 - Seff).

2. Claimant alleges that he was unaware that his machine had damaged the pipes; that he did not know the location or presence of the pipes; and that he was not told by his supervisor of potential damage to the pipes.

The transcript of the hearing clearly shows that the Carrier acted upon credible testimony which rebutted claimant's allegations. We therefore see no reason to reverse the finding that the destruction of the pipes was the direct result of claimant's negligence.

3. The discipline assessed against claimant was excessive, capricious, **and** unwarranted.

It is undisputed that extensive damage was caused to Carrier's property which in turn delayed a train crew. This was due to the improper operation of the **Scarifier** by claimant. The discipline imposed consisted of a suspension which, however, was deferred, and disqualification as a machine operator for one year from July 15, 1980, a period of time long past. **It** can be reasonably assumed that in the absence of any fresh charges against him, claimant was restored to his former position of machine operator two years ago. Under all the circumstances we hold that the discipline was commensurate with the offense and was not arbitrary, capricious or excessive. The claim is, therefore, 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;

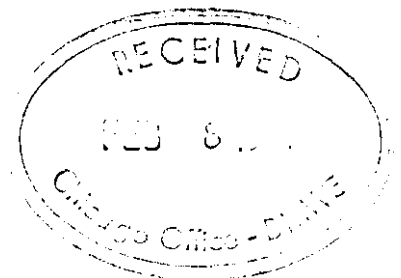
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employee** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

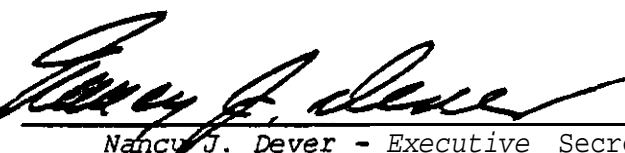
That the Agreement was not violated.

A W A R D

Claim is denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest 
Nancy J. Dever - Executive Secretary

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