

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25108
Docket Number CL-25225

Thomas F. Carey, Referee

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

PARTIES TO DISPUTE: {

(Chicago and North Western Transportation **Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9775**),
that:

1. Carrier violated the terms of the current Agreement, particular Rule 21 when it assessed an actual sixty (60) day suspension on Mr. Joseph C. **Eichman**, Train Order Clerk, as the result of a formal investigation held on **December** 31, 1981, and

2. Carrier **shall** be required to compensate Mr. Joseph C. **Eichman** for all monetary losses suffered account serving the actual sixty (60) day suspension commencing January 6, 1982, and his record cleared of all charges preferred against him.

OPINION OF BOARD: At the time this dispute arose Claimant was employed as an Operator at Broadway Tower at **Green Bay, Wisconsin**. By letter dated **December** 29, 1981, the Carrier advised the Claimant to attend a formal investigation concerning the following charge:

"Your responsibility in connection with allowing opposing movements, switch Job 04 on Eastward movement and Way Freight Job 13, a westward movement to occupy the westbound main line in the vicinity of the coach yard, at the **same** time, at **approximately** 9:30 A.M. on **December** 25, 1981 while employed on Job 001. Operator, Broadway Tower."

An investigation was held on **December** 31, 1981, after which Claimant was assessed sixty (60) days' actual suspension.

The Carrier contends that the Claimant violated its rules governing operation on the Green Bay Subdivision when he permitted Job No.13, **which** was travelling west from Tavis, and Job No. 04, **travelling** east from Broadway on the same westbound main line, without adequately informing each crew of the **other's whereabouts**. The rule in question is contained in Carrier's time table and reads as follows:

"Between **Tavis** and **Broadway...Yard** movements must obtain permission **from** Control Operators to **occupy** main tracks **between** these points and **secure** train location information.

The Carrier argues that the rule specifically required the Claimant to fully apprise the crew of each train as to the whereabouts and movement of the other. The Carrier contends that the Claimant did not act promptly and expeditiously to take control of the situation resulting in the placement of **two** trains on the same track heading towards each other and, possibly, causing a serious accident.

The Organization asserts that the Claimant was not at fault. It argues that blame, if any, must lie with the crews of each train who did not know of the exact whereabouts of the other train. The Organization further asserts that the Job #04 was tardy in proceeding towards the coach yard, which resulted in the near accident. Finally, the Organization suggests that it is inequitable for the Carrier to single out the Claimant and impose a sixty-day suspension, when some nine (9) other employees were involved in the incident.

We have reviewed the entire record. We first point out that our findings are based solely on evidence and arguments raised on the property. Thus, for example, we have not considered the Organization's contentions relating to the conduct of the proceeding since they were not first raised on the property.

We believe that while there exists substantial evidence of Claimant's guilt, a sixty (60) day **suspension** is harsh and excessive.

Claimant was the Block Operator at Broadway Tower on the morning of December 28, 1981. As such, he was responsible for train movements in Broadway yard at that time. This responsibility obligated him to inform crews of train Nos. 13 and 04 of the whereabouts of the other train, particularly where, as here, clearance had been given for the No. 13 to operate westbound, and the No. 04 to operate eastbound on the same stretch of track. While Claimant may have spoken to the crew of each train, he did not inform each crew of the specific whereabouts of the other. As such, he created a potentially dangerous situation.

Nonetheless, under the circumstances of this case, we do not believe that a sixty (60) day actual suspension is warranted. It is clear that some responsibility for this incident must also lie with the train crews themselves, particularly the crew of No. 13. They had to know that by not proceeding immediately into the west end of the coach house they were running the risk of a near collision.

In our view, an appropriate penalty is a ten (10) day actual **suspension**. Claimant, in two and a half years of service had been previously given a ten-day deferred suspension. An actual suspension of similar duration and for a similar offense is to be taken as a clear reminder that he must fully apprise train crews of movement and location, particularly in situations similar to those present here.

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

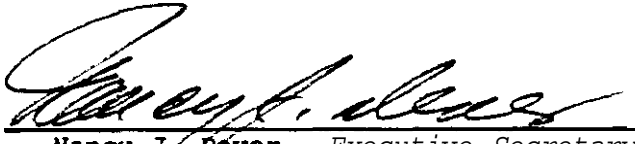
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.