

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 26297
Docket Number CL-25932

Eckehard **Muessig**, Referee

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

PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9918) that:

(a) Carrier violated Rule 27 of the General Clerical Agreement when as a result of a" investigation held July 13, 1981 it wrongfully and arbitrarily found Claimant Kubasiewicz at fault for failure to take action to inform crews operating in opposite directions of conditions affecting their movement and administered discipline in the form of thirty (30) days actual **suspension.**

(b) Carrier shall now make Claimant **Kubasiewicz'** record clear and compensate him for all time **lost."**

OPINION OF BOARD: The significant event leading to this Claim occurred on May 30, 1981, when two trains collided, causing a derailment and damage to the track.

The Carrier charged and later found the Claimant guilty of failure to inform the two train crews, who were operating **in** opposite directions, of conditions affecting the movement of their trains.

The Organization essentially contends that the Claimant was not guilty of the charge on the ground that he did not control or authorize the movement of the trains involved.

This Board has thoroughly reviewed the record and evidence properly before us. and we are satisfied that the Investigation was conducted in a fair and proper manner. The Claimant and the Organization were afforded wide latitude when developing material facts and establishing the relevancy of the proceedings.

With respect to the merits of the charge, we have no significant disagreement with the Organization's contention that it would be reasonable to conclude that, had the crews of the two trains complied with Rule 105, the collision would not have occurred. The Board does note that, apparently, the Carrier recognized that certain crew members also were responsible for the accident, and assessed discipline accordingly.

However, turning to the Claimant, while it may be true, as suggested by the Organization, that at the time of the accident, the Claimant did not have the assigned jurisdiction over the train movements at issue here, this contention does not set aside the fact that the Claimant, for the most part, did the **communicating** and relayed information between the train crews and the Dispatcher. The evidence clearly established that he acted as an intermediary between the Dispatcher and the train crews. The Claimant's testimony, as **shown** by his choice of words and phrases (such as "my local," "told them where to stay," to mention but a few), is evidence he, in fact, engaged in and recognized his participation **in** this role.

In summary, while we are not unmindful and understand the Organization's vigorous protest, both in the record and before this Board, we conclude that the Claimant did have a responsibility to act with reasonable **care** to prevent the collision which occurred. Having found that he did not act with this degree of care, we also conclude that some discipline was proper. However, under all the circumstances of the record, we find some mitigation and, accordingly, hold that the suspension be reduced to twenty (20) days.

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 S. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.