

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26325
Docket Number CL-26137

Marty E. **Zusman**, 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
(CL-9954) that:

1. Carrier violated the terms and provisions of the current Clerks' Agreement, particularly Rule 21, when on date of August 10, **1983**, the Carrier issued Discipline Notice #**1825** to L. E. Stevens, Clerk, Kansas City, Missouri, assessing him a 60-day actual suspension effective upon the completion of his assignment August 10, 1983, after investigation which was held on August 5, 1983.

2. Carrier shall now be required to compensate Clerk L. E. Stevens for all time lost as a result of the 60-day actual suspension and that his record be cleared of **such entry.**"

OPINION OF BOARD: Claimant was notified to report for a formal Investigation to determine his responsibility if any, for the failure to call an Engineer to protect a vacancy. After postponements, the Investigation was held on August 5, 1983. The Claimant **was** notified by letter dated August 10, 1983, that he had been found guilty as charged and was assessed sixty (60) days actual suspension.

With respect to the merits of the case the Board finds sufficient evidence present to warrant the conclusion that the **Claimant** is guilty as charged. Claimant's assignment was 11:00 P.M. to 7:00 A.M. the morning of June 30, 1983. On his shift, he was to be aware of vacancies on the Crew Board and to fill those vacancies. Vacancies are noted with a blank where the name should be and boxed in red. The **Chief** Crew Dispatcher indicates he circled the Engineer vacancy in red the day before and notes that the particular vacancy was known for the "better part of a week" because it was due to a vacation. Claimant denies noticing that the vacancy was outlined and admits not filling the vacancy. Clearly, the Investigation provides sufficient evidence that the Claimant failed to review the Crew Board for blanks and to call an Engineer to protect an assignment. The probative evidence supports the Carrier's findings of guilt.

This Board **has** carefully reviewed the assertions made in the **record** on property. It finds no evidence to substantiate that the vacancy was boxed in red after the Claimant turned over his schedule to the Chief Crew Dispatcher. This Board does not determine issues of credibility and neither does it find that the lack of testimony by the **employee** the Claimant relieved, in any manner relieves the Claimant from his responsibilities herein. The

Claimant acknowledged that he was required to call the vacancy. That vacancy could have been noted by a blank space or a red box. He did not note the blank or the red box and in either event, was responsible for the failure to call the Engineer by 6:00 A.M. as charged. See Third Division Award 26035.

Having determined that the Claimant did not fulfill his responsibilities, the only question left to be determined is whether the Carrier has imposed reasonable discipline. In this regard, an **employee's** service record can and should be considered to maintain progressive discipline. Third Division Awards 25251, 19037. In the instant case, the Claimant has been disciplined several times for failure to properly perform his duties. **His** actions in this case compel the Board to find that the discipline was fully warranted. This Board will not disturb the Carrier's action.

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::


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.