

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26577
Docket Number CL-27230

Elmer F. **Thias**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers. Express and Station **Employees**
PARTIES TO DISPUTE: (
(Railroad Perishable Inspection Agency

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10116) that:

1. The Railroad Perishable Inspection Agency acted in an arbitrary capricious and unjust manner and in violation of Rule 25, among others when it assessed V. Simas discipline of a forty-five (45) day suspension commencing October 30, through December 13, 1985.

2. The Agency shall now be required to reinstate Victor Simas and compensate him an amount equal to what he could have earned, including but not limited to daily wages, overtime holiday pay and vacation pay as though he had not received this discipline."

OPINION OF BOARD: Claimant was assigned to the position of Inspector, Condition and Breakage, with duties of inspecting loads, packages and perishable commodities with the further duty of writing complete, accurate, grammatical descriptions of the conditions found in those inspections. Under date of October 3, 1985. the Agency filed formal charges against the Claimant reading as follows:

"Failing to satisfactorily fulfill your duties as an Inspector, Condition and Breakage, awarded you under Bulletin No. 1222 dated March 27, 1985 because you failed to write complete, accurate, grammatical descriptions of the conditions found."

In the letter of charges, the Agency set forth five examples in which the Agency alleged the Claimant had failed to fulfill his duties.

An investigation was originally scheduled for October 10, 1985. but was postponed and held on October 18, 1985. The Claimant was present during the investigation and he was represented by an Organization representative. It is our conclusion that the investigation was conducted in a fair and impartial manner.

The first four examples, in which the Carrier has alleged the Claimant failed to fulfill his responsibilities, consist of four sets of duplicate reports that the Claimant prepared on the same shipment in each example. The testimony of the District Inspector, who was called to explain the **inaccuracies** within the reports made by the Claimant, indicates those inaccuracies

were primarily due to the fact that the information on both reports **for** the same shipment did not coincide in all respects. However, it was also developed during the investigation that the District Inspector had removed the initial **reports** from the Claimant's desk without his knowledge. Thus, duplicate reports were prepared for the four shipments here involved.

The fifth and last example which the Carrier suggests demonstrate a failure of the Claimant to properly perform his duties is a single report made for a single shipment. Testimony within the record demonstrates that the Claimant did fail to properly indicate decay on the front side of the report although decay was reported on the reverse side of the inspection report.

On the record set **forth** above, the Agency initially imposed a **forty-**five day suspension upon the Claimant, but this was modified and reduced to a thirty-seven day suspension in the appeal process on the property.

Upon review and consideration of the record, we find that the Claimant has a degree of culpability in the reports he made on the five shipments here involved. On the other hand, there are mitigating circumstances which the Carrier has not recognized. It is our judgment that a thirty-seven day suspension from service is harsh and excessive. We hold that a suspension of more than eighteen days cannot be supported on this record. Accordingly, we direct that the Claimant be paid his wage loss for such time as exceeds the eighteen day **suspension**.

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 30th day of September 1987.