

The Third **Division** consisted of the regular members and in addition Referee Edwin H. **Benn** when award was rendered.

PARTIES TO DISPUTE: ((America" Train Dispatchers Association
(Seaboard System Railroad

STATEMENT OF CLAIM: "...the discipline assessed Mr. Akers is much too severe to fit the circumstances and should be removed and Mr. Akers paid for all lost time from his train dispatcher position."

FINDINGS :

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act **as** approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties **to** said dispute waived right of appearance at hearing thereon.

Claimant has been in the Carrier's service since September 1, 1972 and has functioned as a Train Dispatcher since 1975. As a result of charges dated September 5, 1984, investigation ultimately held on September 26, 1984, and by letter dated October 22, 1984, Claimant was assessed a 90 day suspension for allegedly using insubordinate, discourteous and uncivil language when responding to an inquiry from an Assistant Terminal Trainmaster on September 1, 1984.

On September 1, 1984, Hamlet, North Carolina Assistant Terminal Trainmaster J. M. Dyer called Claimant on the phone and asked when Train 246 would arrive at Hamlet. According to Dyer, Claimant responded that he had just given a lineup to the Hamlet Operator and did not have time to give the lineup to everybody. Dyer told Claimant that he did not have a lineup from the Operator and asked for the information from Claimant. According to Dyer, Claimant stated "I told you I just gave it to the Operator and I'm busy." Dyer insisted on receiving the information from Claimant. Claimant then responded "I don't care who you are, I gave the line-up to the Operator and I'm busy doing block work now." Dyer testified that he told Claimant that he

would wait, to which Claimant responded, "You can wait all day." Chief Dispatcher W. R. Austin observed Claimant at this point in the conversation slam the phone on the desk and lay his head on the desk. After approximately fifteen seconds, Austin observed Claimant pick up the phone and continue the conversation. Austin characterized Claimant's tone of voice during the conversation as "extremely loud" and Claimant also appeared to Austin to be "very agitated and he was mad."

Dyer further testified that he told Claimant that "I'm not going to listen to any more of your mouth" to which Claimant responded "I don't report to you and I'm going to file a grievance against you for what you're doing." Dyer demanded respect from Claimant due to Dyer's position as an officer of the Carrier. Dyer testified that Claimant responded "I don't care who you are. You call up here with all these stupid questions. I told you I gave the line-up to the Operator." Dyer continued to demand the figure on the train and stated that "I want you to give it to me now." According to Dyer, Claimant responded "If you're too lazy to get off your ass and do your job, **I'll** give you something." Dyer again demanded the figure. Claimant finally responded stating that "He'll be somewhere at 3:00 p.m." Further, Dyer testified that the conversation ended after Claimant "used profanity several times, directed toward me . . ." According to Austin, "I heard the word 'damn' and I heard the word 'hell' but I can't say in what sequence . . ." Austin also testified that after the incident ended Claimant "conducted himself properly without any further raising of his voice . . . and he did his job real well."

Claimant testified that he was extremely busy when Dyer called and **had just** previously given the lineup information to the Operator. Although giving a different interpretation to the events, the substance of Dyer's testimony is not substantially denied by Claimant.

Rule G-1 prohibits insubordination. Rules B and D require employees to obey instructions and the Carrier's Rules. Rule 818 requires employees to courteously answer questions and furnish information relating to the movement of trains to those authorized to receive such information. We are satisfied from our examination of the entire record that the Carrier has demonstrated substantial evidence justifying its conclusion that Claimant was in violation of the above-cited Rules. Claimant's responses to Dyer on the date of the incident amounted to the use of insubordinate, discourteous and uncivil language to a Carrier official seeking information from Claimant.

Nevertheless, we believe that a **90** day suspension under the circumstances of this case is excessive. Putting aside the issue of whether reference to Claimant's past disciplinary record was properly raised on the property by the Carrier, we note that Claimant's past record, although showing several prior instances of misconduct resulting in a letter of caution or the issuance of demerits, has been clear for six and one-half years prior to this incident. Further, we also take note of the fact that at the time of the incident, Claimant was extremely busy and had just given the same information

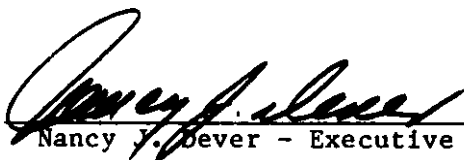
sought by Dyer to the Operator. **Dyer**, although being entitled to the information and to have it presented to him in a prompt, courteous fashion by Claimant, remained insistent, perhaps to a degree greater than what was called for by the immediate situation. The end result was an incident that simply, and unfortunately, got out of hand. Considering all of the above, we believe that a 45 as opposed to a 90 day suspension would have been appropriate under the circumstances to convey the message to Claimant that his conduct was unacceptable. The suspension shall therefore be reduced to 45 days and Claimant shall be compensated accordingly.

A U A R "

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.