

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9992)  
that:

Claim No. 1

1. Carrier violated Rule 21 of the Agreement when under date of April 19, 1984, it assessed a thirty (30) day suspension against Mr. D. L. Thoma on the basis of a formal investigation held at 9:00 A.M. that same date.

2. Carrier shall now be required to compensate Mr. D. L. Thoma for all time lost as a result of this suspension and to remove all references of the charges, investigation and suspension from his service record.

Claim No. 2

1. Carrier violated Rule 21 of the Agreement when under date of April 19, 1984, it assessed a thirty (30) day **suspension** against Mr. D. L. Thoma on the basis of a formal investigation held at **9:20** A.M. that same date.

2. Carrier shall now be required to compensate Mr. D. L. Thoma for all time lost as a result of this suspension and to remove all references of the charges, investigation and suspension from his service record."

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.

The first Claim before the Board has its genesis in a letter of charge dated April 17, 1984. On that date, the Claimant was directed to attend an investigation as follows:

"Dear Sir:

You are hereby directed to report for formal investigation as scheduled below:

PLACE: Conference Room, 4823 No. 119th St.,  
Milwaukee, Wisconsin  
DATE: Thursday, April 19, 1984  
TIME: 9:00 A.M.  
CHARGE: Your responsibility for delay to Extra  
402 West at **Wiscona** about 9:00 A.M. on  
April 12, 1984, while you were assigned  
Control Operator, Job 002, commencing  
duty **7:59** A.M. at Butler, Wisconsin."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

The second Claim relates to the following charge, which was also set forth in a letter dated April 17, 1984:

"You will arrange to appear for formal investigation as indicated below:

PLACE: Conference Room, Division Manager's  
office, 4823 N. 119th St., Milwaukee,  
WI  
DATE: Thursday, April 19, 1984  
TIME: **10 AM**  
CHARGE: Your responsibility for your failure  
to observe coke laying between Track  
6 and 7 at Madison, Wisconsin, when  
you stepped on coke and sustained an  
injury to your back while assigned to  
Yard Clerk-T.O. Job 002, commencing  
duty at **6:30** AM on April 14, 1984 at  
Madison, Wisconsin."

He was given a **30-day** suspension for this incident as well.

Regarding the first incident, the Organization emphasizes that the delay involved was minimal. While it is true, it was completely unnecessary. The Claimant's testimony made it clear that he knew that it was his responsibility to properly align the interlocking plant. He also stated that he basically assumed that the train would be operating up the Shore Line Sub-division, and did not check with either the train dispatcher or the order

sheet to determine what the proper alignment should be. Moreover, he had the order sheet available to him, and also had a dispatcher phone with which he could contact the dispatcher. Yet he failed to take any action to make sure proper alignment had been effected. Thus, his plain disregard for his duties compels some discipline. It is also our opinion that a 30-day suspension was not inappropriate in view of his past record which included other similar incidents. It is noted that one such prior incident occurred less than a year before and also resulted in a 30-day suspension.

The Claimant's guilt on the second charge is also substantial. However, 30 days is excessive for these circumstances. While he was negligent to some degree, he wasn't grossly negligent or plainly negligent to such a degree to justify a **30-day** suspension. Accordingly, the suspension is reduced to five days and the Claimant will be compensated for the difference.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Beyer - Executive Secretary

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