

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Gateway Western Railway

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10577) that:

1. Company violated the agreement between the parties when it wrongfully suspended Clerk Walt Francz, Kansas City, MO., from service of the Company for thirty (30) days, commencing 11:59 p.m., Wednesday, August 1, 1990 and ending 11:59 p.m. Friday, August 31, 1990.

2. Company shall now be required to compensate Clerk Walt Francz for thirty (30) day's pay, August 1 through August 31, 1990, and his record be cleared of all charges as a result of investigation."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 Claimant and arguments in this case are basically the same as those found in Third Division Awards 29390 and 29392. The fact situation is slightly different. In this case, Claimant was charged with allegedly assigning an incorrect disposition to two cars which were received in interchange from a connecting railroad. The Investigation was held on July 12, 1990, and was followed by a notice of discipline which assessed a thirty day suspension commencing August 1, 1990, and ending August 31, 1990.

The Organization has advanced the same procedural arguments in this case as they did in Third Division Awards 29390 and 29392. The Findings as set forth in those Awards in regards to the procedural contentions are equally applicable in this case and are, by reference, made a part of this Award.

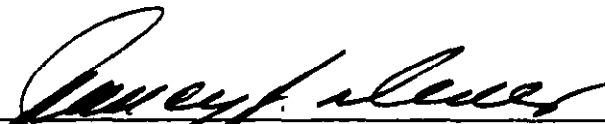
On the merits, the Hearing record contains substantial probative evidence to support the conclusion that Claimant did, in fact, improperly mark the cars in question. As to the degree of discipline imposed, it is not the function of this Board to substitute its judgment for that of the Carrier unless the action as taken by the Carrier was capricious or excessive. In this case, it is our determination that the discipline as assessed should not be changed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.