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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31959
Docket No. TD-32258
97-3-95-3-70**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(American Train Dispatchers Department/
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Appeal of the 30 day suspension imposed Harrisburg train dispatcher J. M. Carrow as a result of a disciplinary hearing held on August 16, 1993."

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 employee 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 were given due notice of hearing thereon.

The Claimant in this claim held approximately 23 years seniority with the Carrier and was working as a third trick Train Dispatcher at the time of the incident in question.

On August 16, 1993 an Investigation was held to determine the Claimant's responsibility, if any, in establishing the conditions for a head-on collision between a train and a track car. It was determined that the Claimant was guilty as charged and he was assessed a 30 day suspension.

The Organization appealed the discipline contending that the Carrier failed to prove its charges against the Claimant. Furthermore, the Organization argued that the Claimant was improperly withheld from service pending the Hearing and that the Carrier failed to make clear the offense that the Claimant was accused of committing.

This Board reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of establishing the conditions for a head-on collision between the train and the track car. The Carrier has noted the pages in the transcript which make it absolutely clear that the Claimant was guilty of the violation with which he was charged.

With respect to the issue that the Carrier violated the Agreement by immediately removing the Claimant from service, this Board must find that there was no violation of the Agreement. This Board has held on several occasions in the past that charges involving safety may properly be the basis for holding an employee out of service.

In Third Division Award 29590 this Board cited Third Division Award 28319 where we stated:

"With respect to the Claimant being held out of service pending the Investigation, it has been consistently held in this industry that charges involving safety...may properly be the basis for holding an employee out of service."

There is no question that the charges against the Claimant involved safety. He had created a hazardous condition which led to a potential head-on collision. That is enough to hold him out of service under Section 18.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant received a 30 day suspension. Given the seriousness of the wrongdoing committed by the Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the suspension. Therefore, the claim will be denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of March 1997.