

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21403
Docket Number CL-21272

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7865) that:

Carrier violated provisions of the agreement on the date of June 10, 1972, when it unjustly suspended Claimant Shoaf from service without pay beginning June 6, 1972, and ending midnight, June 20, 1972.

For this violation, carrier shall now compensate Claimant Shoaf by allowing him his normal earnings for that period suspended, or \$392.48.

OPINION OF BOARD: This is a discipline case involving the Claimant, E. M. Shoaf, Agent-Telegrapher, who was assigned to work from 8 a.m. to 5 p.m. with lunch hour off, Monday through Friday with Saturday and Sunday rest days, at a straight time hourly rate of \$4.46 on the date of the initial claim. On May 24, 1972, the Claimant returned from the meal period to his office and was advised by the Clerk in the office that a call had been received via radio from the Engineer of the so-called Lexington switcher reporting that an intoxicated male trespasser was lying on the ground along side the tracks in the yard and requesting that the city police be notified to remove him. The Clerk notified the Lexington police. When Mr. Shoaf, the Claimant, returned from lunch, he was advised that the Engineer had called and given the message to call the police department and have the trespasser removed and that he had done so. He also advised that the police department had called back and told the Clerk that the man claimed to have been run over by a train and he had to be removed by an ambulance. The Claimant then telephoned the Claim Agent's office in Salisbury, North Carolina, seventeen miles south of Lexington, and reported the matter to the Clerk in that office. She in turn relayed the information by telephone to the Claim Agent who then went to Lexington and made an on the ground investigation. The Claimant did not at any time report the matter to the Chief Dispatcher, his immediate supervisory officer, or to the Superintendent at Greensboro, these two men being the proper authority to whom such reports must be sent as directed by the applicable operating rules. As a result, the Chief Dispatcher first learned of the incident two days later and at that time belatedly made his report to the Superintendent at system headquarters.

On May 27, the third day after the incident, the Superintendent advised the Claimant to attend an investigation on the charge of failure to properly report alleged injury to a trespasser at Lexington on May 24 and violation of operating rules "N" and 1151. It appears from the record there is little doubt that there was a technical violation of the operating rules. The operating rules are designed with the thought in mind that information be relayed as promptly as possible to the responsible persons with the authority to act in behalf of the management of the railroad. A failure to follow such rules can result in considerable liability to the carrier and it is imperative that the rules be strictly followed. They are designed with this effect in mind. However, in mitigation, it should be pointed out that Claimant, upon receiving the information from the Clerk, did act promptly, although incorrectly, to bring this information to the attention of management. However, it is the opinion of this Board some reasonable discipline should have been awarded. Eleven days seems excessive in view of the circumstances and it is the opinion of the Board that to the extent the discipline exceeds five working days that such discipline is to be rescinded and the Claimant made whole in accordance with the provisions of the agreement in such matters.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

We find that the Agreement was violated to the extent noted in the Opinion of the Board.

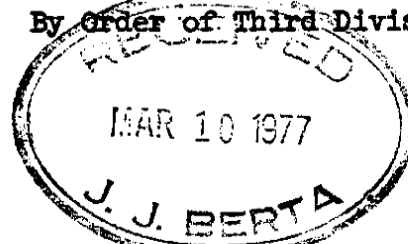
A W A R D

The Claimant is to be compensated for his normal earnings for all days in excess of five in the suspension period which began June 6, 1972 and ended midnight June 20, 1972.

ATTEST:

A.W. Paulos
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



Dated at Chicago, Illinois, this 18th day of February 1977.