

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22204
Docket Number CL-22211

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8417) that:

1. Carrier violated the Agreement between the parties when it determined that Operator R. W. Uhland violated Rules 801 and 802 of the Operating Rules on February 4, 1975, and suspended him from service for thirty (30) days, and

2. Carrier shall, as a result, compensate R. W. Uhland for all wage losses suffered during the period February 24, 1975 through March 25, 1975, while suspended from service, and clear his record of the discipline administered.

OPINION OF BOARD: On January 28, 1975, Claimant was charged with being "insubordinate, quarrelsome, vicious, boisterous, and using profane or vulgar language." Subsequent to investigation, he was assessed thirty (30) days' actual suspension.

Claimant (who had six (6) months' service as a block operator at the time) issued a clearance on "Form A" which contained interlineations and alterations. The Trainmaster summoned the employee to discuss proper methods of filling out clearance forms. During that discussion, Claimant conceded that the form had been prepared improperly, but his conduct resulted in the charges herein, which assertedly violate Operating Rules 801 and 802:

"801. Civil, gentlemanly deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Employees must not enter into altercations, play practical jokes, scuffle, or wrestle on property of the Company or while on duty.

"Employees are required to report such misconduct, or negligence affecting the railroad's interests, to their superior officer. Any employee subjecting the company to garnishment, attachment proceedings involving his wages will be subject to discipline."

"802. Employees who are disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent, or who wilfully neglect their duty, endanger life or property, or who make false statements or conceal facts concerning matters under investigation, are subject to discipline."

We have studied the transcript of the hearing, as well as the entire record. We do not find that the employee denied the testimony of the Trainmaster as regards the context of the discussion. Rather, he asserts that his words and actions meant something different than understood by the Trainmaster. Claimant's self-serving assertion does not persuade us. The words considered in their context do not reasonably suggest to us the basis for a misunderstanding.

Although the evidence is in conflict, we will not seek to resolve "patently conflicting testimony." (See Award 21612). Nor is the quantum of discipline excessive.

FINDINGS: The Third Division of the Adjustment Board, Upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *C. W. P. [Signature]*
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.