

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22967
Docket Number CL-22927

Martin F. Scheimman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8763)
that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 38 and other rules of the Agreement, when it assessed fifteen (15) days actual suspension of Mr. M. J. Harrison, Crew Clerk, Tampa, Florida, following investigation conducted at Tampa, Florida, on February 28, 1978, and

2. Carrier further violated the Agreement, when it failed to include with the transcript of the investigation copy of document referred to in the investigation; said document being copy of letter from Switchman R. C. Shiver; addressed to Superintendent Jack Cherry, containing allegations against Crew Clerk Harrison and being basis for Carrier's conducting of investigation. The conducting officer referred to the letter-in-question several times during the investigation and made statement that the letter would be made part of the investigation, and

3. That Carrier shall now be required to compensate Claimant for all time lost and other benefits taken from him as a result of Carrier's action and shall now be required to clear from Claimant's service record any reference to the investigation and the discipline assessed.

OPINION OF BOARD: Claimant, M. J. Harrison, after investigation, was suspended 15 days for his responsibility in regard to a time claim submitted by Switchman R. C. Shiver. The thrust of the charge against Claimant is that he failed to answer the telephone and mark up Switchman Shiver on December 31, 1977. As a result, Shiver missed his assignment on January 1, 1978.

The Organization contends that Claimant's action on December 31, 1977 was not unreasonable. It argues that Claimant was extremely busy with other calls and, therefore, could not take Shiver's call. For this reason,

Claimant instructed Shiver to call back to mark up at a later point. Therefore, the Organization insists that Claimant is guilty of no offense.

Carrier, on the other hand, asserts that Claimant had an opportunity to handle the call. It insists that Shiver, while calling long distance, held the phone for 20 minutes for Claimant. Carrier also claims that Shiver called a second time but was still unable to get Claimant to take the call. In Carrier's view, Claimant's behavior warranted the discipline imposed.

A review of the transcript indicates, in no uncertain terms, that Claimant's actions were inappropriate. The record reveals that Claimant had ample opportunity to handle Shiver's telephone call. While it is true, as the Organization contends, that December 31, 1977 was a hectic day, the fact remains that there is no evidence that the work load was so overwhelming as to justify two long distance phone calls not being handled.

We are convinced that Claimant was aware that Shiver was calling long distance. Crew Clerk Evans testified that he told Claimant that Shiver was calling long distance. We are also persuaded that Claimant, if he had not acted in a dilatory fashion, could have handled Shiver's call in a matter of seconds. In fact, when asked how long it would have taken to speak to Shiver, Claimant admitted "not very long at all."

Thus, Claimant's failure to take Shiver's call was unreasonable. His action clearly subjected him to appropriate disciplinary action. Given the proven offense, we see no reason to set aside the discipline imposed.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.