

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23867
Docket Number CL-23840

Ida Klaus, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9323)
that:

(1) Carrier violated the Clerk-Telegrapher Agreement when it erroneously determined Operator W. R. Hupp violated Rule D-151 of Carrier's Operating Book of Rules on October 26, 1977, and suspended him for five (5) days, and

(2) Because of such wrongful action, Carrier shall now be required to exonerate Mr. W. R. Hupp, compensating him for lost wages suffered between November 19 and 23, 1977, the period of suspension.

OPINION OF BOARD: The Claimant protests as unjust the assessment of five days actual suspension for his responsibility in authorizing the movement of a train against the current of traffic without proper protection, in violation of Carrier Operating Rule D-151.

The Organization contends that the record does not support the charge and the discipline imposed. It denies particularly the Carrier's finding that the Claimant "admitted responsibility in this matter".

The Board accepts the Carrier's resolution of the conflict between the testimony of the Claimant and that of the dispatcher as to the central issue of the nature of the communication between them at the time in question.

The Board finds on the entire record that there was substantial evidence of a reliable and probative nature to support the Carrier's action. Accordingly, we may not overturn the Carrier's decision.

We find it unnecessary to consider, in addition, the validity of the Carrier's assertion that the Claimant admitted responsibility.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.

