

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24243
Docket Number CL-23889

Carlton R. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9356) that:

1. Carrier violated the Agreement between the parties when it arbitrarily, capriciously, and in abuse of discretion, suspended Clerk Cecil Ritchie from service for fourteen (14) days as a result of investigation held on April 18, 1980.

2. Carrier shall, as a result, compensate Clerk Ritchie for all time lost and clear his record of the charge brought against him.

OPINION OF BOARD: The claimant seeks to overturn a fourteen-day suspension resulting from his failure to execute a waybill for a car which contained hazardous materials. The car had arrived in the yard without a waybill. The claimant indicates that he had received a call from the originating railroad clerk informing him that the car was coming to his yard, that it contained hazardous material, that it did not have a waybill, and that he did not have transportation to bring the waybill over to the claimant.

The yardmaster was aware that the car contained hazardous material and made provisions for it to be placed in the proper train location as required by law.

The claimant indicates that he was so busy doing many things that he did not execute a waybill, but rather put the appropriate information, including the fact that the car contained hazardous material, on the back of an IEM card.

The claimant alleges that on many occasions a car which is received without a waybill is forwarded without a waybill using the same device as he did here; namely, putting the information on the back of an IEM card. The Carrier is particularly concerned here because there was hazardous material involved and asserts that the fact that cars have been forwarded without waybills in the past did not relieve the claimant of his responsibility to execute the proper waybill.

Although the Carrier is reflecting an obvious deep concern for the movement of hazardous materials on its property, there is no evidence that the action of the claimant heightened any potential danger.

It is interesting to note that the last paragraph of the letter which assessed the fourteen-days' suspension was as follows:

"It is hoped that you have benefited from this experience and will conduct your duties in the future in a manner to avoid a recurrence of a similar incident".

It is established precedent in this Division that if there is substantive evidence supporting a rule violation upon which the Carrier makes its decision, that it will support the Carrier unless it is palpably erroneous on its face. For that reason, this Board is usually reluctant to reduce a penalty and will only do so when it is strongly indicated. In this instance, after a careful review of all the evidence in the record, this Board finds that while it is admitted that no waybill was prepared but rather that the information which would normally have been placed on a waybill was put on the back of an IBM card, that this in itself is not sufficient to establish the guilt of the claimant. It is not clear that it was his responsibility clearly understood by him, that a waybill was so essential in this instance that he could not follow the usual procedure and use a substitute document, particularly in light of his alleged being very busy performing his other functions. A delay of the train might have resulted from his having to execute the waybill which was hardly desirable under the circumstances.

It seems clear to this Board that the Carrier was deeply concerned because there was a dangerous car involved and further concerned that the FRA Regulations had been violated; however, this Board finds that it has not been clearly established that there was a duty on the part of the claimant to process the waybill in light of the previous practice, and the fact that hazardous material was involved did not in itself so alter these circumstances as to have made the claimant guilty as was decided by the Carrier. For these reasons, this Board will uphold the claimant and grant the award.

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

That the Agreement was violated.

A W A R D

Claim sustained.

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 14th day of March 1983.