

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26525
Docket Number CL-27730

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10136) that:

1. Carrier violated the Agreement between the parties when on August 12, 1981 Claimant Paul R. Poley was removed from service and on October 7, 1981, was assessed a suspension of sixty (60) days to be served from August 12, 1981 to October 10, 1981, inclusive and disqualification from holding position(s) of Train Dispatcher, Towerman, Clerk-Operator, Leverman or any position associated with Train Operation.

2. Carrier shall now be required to compensate Claimant Paul R. Poley for one (1) day's pay commencing August 12, 1981, and to continue for each and every day through October 10, 1981.

3. Carrier shall further be required to expunge any and all reference to the sixty (60) day actual suspension from the record of Claimant Paul R. Poley.

4. Carrier shall further be required to compensate Claimant Paul R. Poley interest in the amount of 20 per cent compounded on the anniversary date of the claim in this dispute for monies wrongfully withheld as a result of Carrier's arbitrary and capricious action in wrongfully disciplining Claimant."

OPINION OF BOARD: In this Docket, the Carrier has failed to file an Ex Parte Submission and failure to do so leaves the position and assertions of the Organization, which adequately support the Claim, unchallenged and uncontroverted. Therefore, Parts 1, 2 and 3 of the Claim must be sustained. (See Third Division Awards 14891, 24020, 24021, 24037, and 24352). Part 4, however, will be denied on the basis that the majority of Awards on the Third Division have stated that unless the Agreement provides for payment of interest on Claims, we cannot sustain a Claim for interest since the Board has no power to create a Rule for the parties. (See Third Division Awards 15709, 17217, 18312, 19522, 19744, 21426, 23120, and 24846).

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 Employes involved in this dispute are respectively Carrier and Employes 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

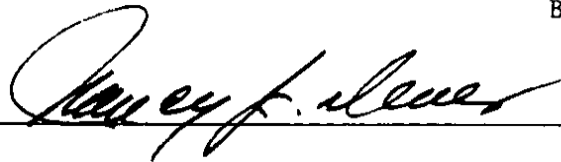
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.