PUBLIC LAW BOARD NO. 5902

PARTIES TO DISPUTE) **UNITED TRANSPORTATION UNION YARDMASTERS DEPT.**
NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Yardmaster T. J. Glissen for reinstatement and pay for all time lost account his dismissal for conduct unbecoming an employee while serving as Yardmaster, Forrest Yard, at about 4:00 P.M., March 10, 1996. (Organization File: UM-TM-96-1; Carrier File: UM-TM-96-1)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

While working as a Yardmaster at the Carrier's yard in Memphis, Tennessee on March 10, 1996, the Claimant used profane, abusive and threatening language toward a fellow employee, a Yard Engineer, in the crew locker room. The incident arose when the Claimant became disturbed by the fact that the Engineer had failed to acknowledge a radio call that he (the Claimant) had made to him in the course of business.

The record also shows that prior to the confrontation the Claimant called the Trainmaster at home to complain that the Engineer would not answer him on the radio, and that the Trainmaster told the Claimant that she would speak to the Engineer about such matter the following day, and that if had any work he needed done that he could talk to the Conductor. In this respect, testimony reveals that the Trainmaster did speak with the Engineer the following day about the failure of the latter to have acknowledged the call, and that the Engineer said that he did not answer his radio when called at that particular time because he was busy talking with a Carman about an end-of-train device and had asked the Conductor to speak with the Yardmaster. During a discussion of the matter with the Engineer, a Yard Helper interrupted the Trainmaster to state that she should know the whole story as to what had happened, principally, that the Claimant and the Engineer had engaged in a confrontation the previous day over the incident.

Substantial credible evidence reveals the Claimant to have been the aggressor in the confrontation. The Claimant left the tower to go to the crew room, which is located in a separate building, so as to confront the Engineer. Upon entering the crew room, the Claimant loudly asked the Engineer if had a problem with him, which then resulted in the verbal confrontation. It also appears from the testimony of witnesses that the Claimant

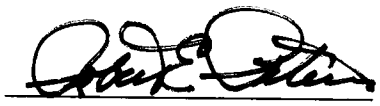
shoved the Engineer with his hands, and challenged the Engineer to settle the matter off the property. The record also shows that when the Trainmaster called the Claimant to her office to inquire as to whether the confrontation had taken place before or after the Claimant had called her at home that the Claimant, in the words of the Trainmaster, "became offensive and defensive right away" and walked out of the meeting, albeit the Claimant said he wasn't going to talk to the Trainmaster without a union representative.

In the circumstances, there is no question that by his actions that the Claimant subjected himself to imposition of a rather severe disciplinary penalty. However, we believe this discipline should be short of his dismissal from all service in view of the Claimant's past record reflecting that in 25 years of service he has only been disciplined on two prior occasions, i.e., a letter of reprimand for excessive absenteeism in 1990, and a 15-day suspension in 1980 for sleeping while on duty. The Board will therefore direct that the Claimant be returned to service with seniority and other benefits unimpaired, but without payment for time lost.

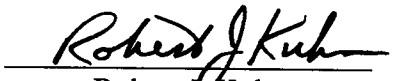
Lastly, the Board will note that it finds no merit in the Organization's procedural protest that the Carrier failed to provide a copy of the Discipline Notice to the Claimant "within ten (10) days from date of the final hearing" as prescribed in Rule 17 of the Agreement. The evidence of record shows that the notice was dispatched by certified mail to the Claimant on April 9, 1996. This was nine days after the hearing had concluded. That the Claimant received and signed for the notice on April 13, 1996 does not overcome the fact that the notice was rendered within the ten-day time constraints of Rule 17. It is the date that the decision is mailed, not the date that it is delivered by the postal authorities that determines compliance with the rule..

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Robert J. Kuhn
Carrier Member

Robert C. Arthur
Organization Member

Norfolk, VA
November 17, 1997