

PUBLIC LAW BOARD NO. 5902

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

STATEMENT OF CLAIM:

Claim is made on behalf of Yardmaster J. M. Catalanotto, Oliver Yard, New Orleans, LA, for all time lost account of being suspended from service for thirty (30) days following a hearing held on June 11, 1997 for alleged violation of Southern Operating Rules 570, GR3, and GR6. (File: UM-AN-97-1)

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.

The discipline at issue arises from a Carrier determination that the Claimant absented himself from work without permission and failed to follow instructions from a Terminal Trainmaster to return his call concerning the request to mark off for personal reasons on April 27 and 28, 1997.

Testimony by the Trainmaster notwithstanding that he had not given permission for the Claimant to absent himself from duty, it concerns the Board that although the Trainmaster found reason to review the telephone tape from the date in question that he would state that since he found no part of the conversation between himself and the Claimant had been recorded that he determined there was no need to save the tape. In this respect, it is urged by the Carrier that the conversation between the Claimant and the Trainmaster was not recorded because the Yardmaster had hung up after he patched the Claimant's call to the Trainmaster. This, contrary to a recognized procedure that called for the Yardmaster to remain on the line in such situations.

Contrary to the statements of the Trainmaster and the Carrier, it seems apparent to the Board that certain conversations of import to a consideration of the incident out of which the discipline arises were recorded on the tape. In this respect, it would seem that there would be a recording of the conversation which took place when the Claimant called the Yardmaster as well as what was said between the Yardmaster and the Trainmaster as to why the Claimant was calling at 5:00 o'clock in the morning before the Claimant was patched through to the Trainmaster. Further, since the Trainmaster testified that after talking with the Claimant that he called the Yardmaster to obtain the Claimant's

telephone number, it would seem that any comment that the Trainmaster may have made to the Yardmaster about a need for him to be in further contact with the Claimant would also have been recorded.

It also concerns the Board that on the one hand the Trainmaster would say that there had been but a very limited and disjointed telephone conversation with the Claimant, while on the other hand would give testimony supportive of a conversation of a somewhat greater extent.

In this respect, the record shows the Trainmaster testifying that when the Yardmaster called him that the Yardmaster said that he had the Claimant on the phone and that the latter "was requesting to mark off." The Trainmaster said that after he told the Yardmaster to patch him through to the Claimant, that he heard the Claimant say, "Hello, Mr. Reynolds," and that his response was, "Yes," and that after the Yardmaster disconnected himself from the conversation, that he "didn't hear anything else." The Trainmaster said that he then said: "Jody I can't hear you, call me back, I can't hear you," and then hung up the phone. Then, after waiting a few minutes, and not hearing from the Claimant, the Trainmaster said that he called the Yardmaster for the Claimant's home phone number. The Trainmaster said that he had to call the Claimant to "find out what, what his problem was." In this latter regard the Trainmaster said that he called the Claimant's home phone number and upon getting a recording, left a message for the Claimant to call him back because he "needed to find out why he needed to be off."

In further testimony, the Trainmaster said that when he went to work that morning he checked the office recorder and found the spot where the Claimant had called in, "but when the yardmaster disconnected himself from us then there was nothing on the tape." The Trainmaster then went on to say: "The conversation that I had with him, but ah, the conversation that he had with Tim Veaszy, the Yardmaster, when he called in ah, explained that, ah, it was his exact words that he had some family, some family bull shit that he, was the ah, statement that he made. Ah, that to, to the Yardmaster." Thus, it seems that the Trainmaster knew why the Claimant wanted to be off, and suggests that he was calling the Claimant for another reason.

According to the Claimant, the telephone connection was perfectly clear and that his conversation with the Trainmaster was as follows:

I said good morning, Mr. Reynolds can you hear me. He said yes I can. I said well I am sorry for calling you at such an early hour Mr. Reynolds. I said but I do need to be off personal account of family situation. Mr. Reynolds said uh huh. He thought for a second he said uh huh, um huh, okay Jody. Hello Timmy [the Yardmaster], oh, oh Timmy. Trying to get Timmy back on the phone. At which time I said thank you Mr. Reynolds and hung up."

The Yardmaster was not summoned to the hearing as a witness.

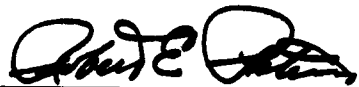
In regard to the second aspect of the charge, the Claimant maintained that he had called from other than his home telephone and that he was not aware of the Trainmaster's instructions to call the office until he returned home on April 29, 1997 and immediately called the Trainmaster.

That the Claimant had previously requested and been denied vacation time for the same two days the subject of the dispute, or that the Superintendent had issued instructions not to allow the Claimant such time off in anticipation of the Claimant making an attempt to mark off for personal reasons, does not overcome the actions of the Trainmaster in a failure to preserve the recorder tape for the date in question. Such argument gives more reason for the tape to have been saved, since an absence of the tape suggests that due to the 5:00 A.M. call at his home that the Trainmaster may well have momentarily forgotten the Superintendent's instructions, given the Claimant permission, and then, on reflection, sought to contact the Claimant to reverse any permission that may have been given.

In the circumstances the Board finds that the Carrier has not met a necessary burden of proof to substantiate its imposition of discipline. Certainly, if the Trainmaster found it necessary to review the tape, then he should have realized that there was a need to preserve it for presentation at an investigation. The tape would have shown the extent of any recorded conversation between all concerned, what the Yardmaster said to the Trainmaster and if and when the Yardmaster hung up and cut-off the taped conversation, the length of time consumed by the patched connection, the time between the Trainmaster hanging up his telephone and calling back to the Yardmaster, and what was said to the latter by the Trainmaster as to why he wanted the Claimant's home phone number. This information was, in the opinion of the Board, pertinent to a proper consideration of the record and a determination of guilt of the Claimant to the charges for which he was cited. The claim will therefore be sustained.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Robert J. Kuhn
Carrier Member



Robert C. Arthur
Organization Member

Norfolk, VA

Dated: August 18, 1999