

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22763  
Docket Number m-22665

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood that:

(1) The suspension of ten (10) days imposed upon **Trackmen** R. E. Jones and E. D. **Ragland** for alleged 'disloyalty' was **improper**, unwarranted and on the basis of unproven and disproven charges **/System** File **C-4(13)-REJ/EDR/12-39(77-15) J/**.

(2) The claimants' record shall be cleared of the charge placed against them **and** reimbursement shall be made for all wage loss suffered."

OPINION OF BOARD: The Claimants were notified of an investigation concerning an assertion that they had violated certain of the **Carrier's** rules dealing with disloyalty, insubordination, and leaving work early without permission.

Subsequent to the investigation, the Carrier imposed a ten (10) day actual suspension upon each **employee** based upon its finding that the **Employees** attempted to take advantage of a situation so as to avoid work and **that they** demonstrated a degree of disloyalty, even though it **was** found that specific charges of insubordination and leaving the job without permission were not substantiated.

The **Employees** insist **that the** Carrier did not present sufficient evidence to warrant a guilty finding and imposition of discipline, and they request that the claim be sustained. However, the Carrier disagrees, pointing out that the Foreman had specifically advised the two **employees** that they were to perform work, **even** though it was raining, and a reference to "going **home**" was stated more in **the** nature of an unwelcome alternative, rather than a free option.

We are inclined to agree **with** the Carrier that the work site is certainly not the appropriate place to conduct a debate, and that when a reference is made to either perform work or "go **home**", the latter alternative is not understood to be a freely given basis to "take the day off."

Our review of the entire record leads us to conclude **that** the **Employees** were well aware of the instruction given to them and that they chose a course of conduct which was not in the best interest of the Carrier.

**While** the Carrier determined, on the property, **that** their action **was** not as severe as the original charge, there is sufficient **evidence** to support guilt in the lesser degree and the 10 day suspensions **cannot** be said to be arbitrary or capricious.

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:

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

