

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23218
Docket Number CL-23216

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway, Airline** and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Chesapeake and Ohio **Railway** Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8907)
that:

Claim No. 1:

(a) **The** Carrier violated the agreement when they did unjustly, **and** discriminately, charge Mr. F. O. Ehrmantraut with responsibility in connection with loss of radio number 014837 **during** his tour of duty on April 16, 1978 **and** did then after hearing arbitrarily **assess** discipline of fifteen **(15)** days **over-**head suspension.

(b) **As** a result of this violation the whole matter should be rescinded and Claimant's record wade clear.

Claim No. 2:

(a) The Carrier violated the agreement when they did unjustly, and discriminately, charge Ma. D. Pontoni with responsibility in connection with **loss** of radio number 014837 during her tour of duty on April 16, 1978 **and** did then after hearing arbitrarily **assess** discipline of fifteen **(15)** days overhead suspension.

(b) As a result of this violation **the** whole wetter should be rescinded, and **Claimant's** record **made** clear.

OPINION OF BOARD: Claimants, F. O. Ehrmantraut and D. Pontoni, both regularly assigned as Operator Clerks **at Carrier's** Lincoln Yard, located at **Wixom**, Michigan, ware each charged in connection with their **responsibility** regarding the disappearance of a portable radio (identified by number as **014837**), during their **tours** of duty on April 16, 1978 and April **15** end 16, 1978, **respec-**tively. Claimants were afforded an **investigative** hearing on May 11, 1978, **and** subsequently were adjudged guilty as charged. Accordingly, **Claimant Ehrmantraut** was given a fifteen **(15)** day deferred disciplinary suspension and **Claimant Pontoni** was given both a letter of reprimand for the proven offense **occurring** on April **15**, 1978, and a fifteen **(15)** day deferred disciplinary suspension for the **reoccurrence** of the offense on April 16, 1978.

In our review of the record we **find Claimants** were afforded a fair **and impartial hearing** and that the discipline imposed by Carrier was neither discriminatory, arbitrary, capricious **nor excessive**. We further find no **showing of proof** which would cause us to disturb or reverse the disciplinary action imposed upon the Claimants by the Carrier.

However, we do admit we are a bit bewitched, bothered **and** bewildered that the instant claim was progressed **to our** Board since the relief sought in this case was achieved by the passage of time and the application of **Rule 27(g)** of the **Controlling Agreement**, effective March 1, 1972. Specifically, **the** relief sought by the Organization was to have **the** subject disciplinary actions **rescinded** thereby clearing the Claimants' records. In our review of the record we **became** aware that Carrier's highest appeals officer apprised the Organization during the on-property handling of the case that said disciplinary actions entered on the Claimants records had been cancelled in accordance with Rule 27(g) which reads as follows:

"A clear record for the first or second six months of a calendar year will cancel one disciplinary entry on service record made prior to the **six months of clear record**. A clear record for **one calendar year will cancel three** disciplinary entries on service record made prior to the year of clear record."

It is obvious to us **from** a simple interpretation of the above-quoted **rule** that the requested relief **sought** has already been effected, albeit by **Agreement Rule** application instead of by **Board** conferred absolution. We cannot help but recall **a parallel** case, wherein out of a wellspring of sheer emotion, wrought, **we** are sure, from a sense of pure frustration, gushed the **following** superlative pronouncement by the highly renowned Referee, Carroll R. Daugherty, in Award No. 287 of Public **Law** Board No. 164 in which we quote in its entirety:

"In these days of individual confusion, national uncertainty, international insecurity **and** cosmic befuddlement, the Board is **impelled bare** to say the hell with **it**."

We note these words were **penned** nearly ten years ago but **like many** memorable expressions eloquently put, we **are** herd pressed to improve upon it or in any way **modify** the sentiment contained therein. We are left then with the inescapable conclusion that the essence of the case before us aptly befits Referee Daugherty's utterance and, furthermore, that the instant issue is **mooter than moot and** shall therefore be dismissed by us.

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 **claim** is moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: 
Executive Secretary

Dated at Chicago, Illinois, this **16th** day of March **1981**.