

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24335
Docket Number MW-24521

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation
((formerly The New York, New Haven & Hartford Railroad Company)

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

(1) The ten (10) days of suspension imposed upon Hy-Pail Operator R. E. Openshaw for 'allegedly changing your testimony as given to Patrolman Richard Bowes on October 22, 1979, regarding the whereabouts and activities of Boom Truck Driver, James Oliver, on August 28, 1979' and for 'alleged violation of Rule D, subparagraph 3' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket No. NH-49).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: In this, a discipline case, the burden of proof is upon the Carrier and if that burden is sustained the discipline assessed shall be sustained unless it be of such magnitude as to be arbitrary, capricious or unwarranted. The evidence before the Board of the whole record, even though it contains some conflicts of testimony, has other oral and written testimony which makes a prima facie case which is not in any way rebutted. Thus the evidence of the total record before the Board is sufficient to sustain the charge and discipline against the Claimant as assessed.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

