

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24467**
Docket Number **MW-24414**

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The sixty (60) days of suspension imposed upon Truck Driver D. A. Rake for alleged 'violation of General Rules "B", and "E", General Regulations 700, 701, 701 (A), and 701 (B) of Form 7908' was without just and sufficient cause and in violation of the Agreement.

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

OPINION OF BOARD: Claimant, a Truck Driver who acquired seniority on April 16, 1980, was involved with two other system gang service employees in an incident on May 4, 1980 at 2 a.m. The three employees were occupying a crew car at the time a 159-car train passed on a nearby siding track to permit another freight train to occupy the main track.

Undisputed testimony was to the effect that firecrackers were thrown at or nearby the moving train, and one of the three system gang service employees admitted to having thrown them. After entering the siding, the train crew discovered that four angle cocks had been turned and two pins pulled on their train, resulting in a train separation. Such could have had obviously serious results, if this had resulted in fouling of the main line.

Since the train engineer had seen one of the three employees throw the firecrackers, he and his crew entered the outfit car occupied by the Claimant and several other employees. A heated verbal dispute followed, after which the train crew left and resumed their run. The crew reported the incident, which was later investigated by a Special Agent.

The claimant admitted having thrown a bucket of water on one of the train crew members after the train crew had left the outfit car. The hearing transcript also reveals uncontradicted threats made by the Claimant against the crew members.

As a result of the investigative hearing, the Claimant was assessed a 60-day disciplinary penalty for violation of rules covering employee conduct. While no proof was established as to the turning of the angle cocks and pulling of the pins, the Board finds that the Claimant's conduct in throwing the bucket of water, as well as his threats to the train crew members, fully justified the penalty.

At various points in the claims procedure, the Organization disputed the Carrier's right to suspend the Claimant pending investigation and hearing, as provided in Rule 48 (o) which reads as follows:

"(o) It is understood that nothing contained in this rule will prevent the supervisory officer from suspending an employee from service pending hearing where serious and/or flagrant violations of Company rules or instructions are apparent, provided, however, that such hearing shall be conducted within thirty (30) calendar days from the date the **employee** is suspended and a decision rendered within twenty (20) **calendar** days following the date the investigation is concluded."

The Organization argues that the offense was not sufficiently "serious and/or flagrant" to warrant suspension prior to hearing. The Board disagrees. At the time of the pre-hearing suspension, the Carrier had a reasonable belief that the system gang service **employees** may have been implicated in a potentially serious situation involving the angle cocks and pins, quite apart from the firecracker and water dousing "pranks". There was full justification for such suspension pending investigation. In any event, the eventual **60-day** penalty was inclusive of the **time** on suspension prior to the investigative hearing.

The **Board** also finds no merit in the Organization's argument that the train crew was not charged or that the train Conductor was not present at the hearing. Claimant admitted his guilt at least as to the water-dousing and made no denials concerning his threats against the train crew.

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

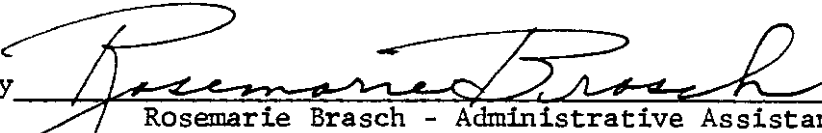
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.