

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward L. Suntrup, Referee

Award Number 24627
Docket Number MW-24828

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The discipline (twenty-five demerits) imposed upon Mr. John Savakinus for alleged "Violation of General Rule T, Paragraph Two, of the Conrail Rules for Conducting **Transportation**" was arbitrary, capricious, without just and sufficient cause and on the basis of unproven charges (System Docket **LV-210**).

(2) The twenty-five (25) demerits imposed upon the claimant shall be removed from his record.

OPINION OF BOARD: Claimant, John Savakinus. entered the service of the employer on September 10, 1974 and at the time of the alleged incident at bar he was employed as a trackman. By letter dated October 21, 1980 Claimant was notified to attend an investigation on October 31, 1980 to determine his responsibility, if any, with respect to his violating General Rule **T(2)** of the Carrier Rules for Conducting Transportation. This Rule reads, in pertinent part:

"No employee will be allowed to absent himself from duty without proper authority nor will any employee be allowed to engage a substitute to perform his duties."

According to the record before the Board this letter of October 21, 1980 specifically charged Mr. Savakinus with excessive absenteeism in view of his "... failure to report for duty on October 16, 1980 by 8:30 AM ..." and "... in light of (his) previous attendance record ...". After the hearing was held as scheduled the Claimant was thereafter notified that he had been found guilty as charged and that twenty-five (25) demerits were being entered into his personal record. After appeal on property up to and including the highest Carrier officer designated to hear **such** appeals, this case is now before the National Railroad Adjustment Board.

A review of the record shows that the Carrier not only failed to meet the test of substantial evidence with respect to the charge of excessive absenteeism, but that Track Supervisor Kilpatrick, in hearing, testified that the hearing itself was not set up to investigate such charge (as the notification of charge letter of October 21, 1980 clearly states) but that the hearing was set up, apparently, for other reasons. These reasons, in the words of this Track Supervisor, were because he "... felt that Mr. **Savakinus** started losing more work than he should and (that he, as Supervisor) needed a certain amount of men in **Hazelton** to get the work done."

In light of the foregoing, the Carrier has failed to sustain its burden of proof and the assessment of 25 demerits should be removed from Claimant's record.

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 **Employee** 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____
Nancy J. **Dever** - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

