

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25688

Docket Number MU-25779

Hyma" Cohen, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(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 Laborers R. C. Duran and M. T. Munoz for alleged "violation of the General Notice, General Rules B, E, and G, and General Regulations 70'2 and 702(B)" was arbitrary, **capricious**, unwarranted and on the basis of unproven charges (System File 6-22-11-14-55).

(2) The claimants' respective records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimants, **Duran** and Munoz, are employed by the Carrier as Laborers. Following a hearing on December 7, 1982, the Claimants were assessed sixty (60) days suspension for their involvement in a occurrence whereby personnel on Extra Gang 2908 were found drinking alcoholic beverages on Carrier property during assigned working hours.

On November 5, 1982, the Claimants were assigned to Extra Gang 2908 and were working under the supervision of Foreman **Barnhill** near Rock Springs, Wyoming. At approximately 3:45 P.M. Roadmaster Angel was notified that several Track Department employees had been observed consuming alcoholic beverages in the Rock Springs area. Extra Gang 2908, consisting of a Foreman and twelve (12) laborers, had been assigned to work in that area with assigned hours of 8:00 A.M. to 4:30 P.M. Both Roadmaster Angel and Special Agent Jacobsen traveled the fifteen (15) mile distance to investigate the report. Upon their arrival at the scene, they found the employees of Extra Gang 2908 sitting in personal vehicles parked along the right of way and several open beer cans were on the ground. After inspecting each of the personal vehicles, Special Agent Jacobsen confiscated approximately one case of beer and a partially filled bottle of whiskey. Roadmaster Angel confronted Foreman **Barnhill** about the situation and he was advised that the men in the Gang had been working hard that week and he [Foreman Barnhill] decided to "reward the men by letting them have beer and taking a" early quit".

On appeal, the Carrier conceded that there was insufficient evidence to conclude that the Claimants actually consumed alcoholic beverages. In the Carrier's view, there was sufficient evidence to support the conclusion that the Claimants were aware of the violation of the Carrier's **Rules** and they did nothing to protect the Carrier's operations.

After carefully examining the record, the Board has determined that the Claimants took no affirmative action to halt the violation of the Carrier's Rules. Between the time that Roadmaster Angel was informed of the misconduct of the Extra Gang and the time he and Special Agent Jacobsen arrived at the location of the Extra Gang, roughly 20 minutes had elapsed.

Consequently the Board concludes that the Claimants acquiesced in the serious violation of the Carrier's Rules and failed to make an effort to protect the Carrier's operations as they are expected and required to do.

However, the Board cannot ignore the fact that the Claimants' immediate Supervisor, Foreman Barnhill, decided "to reward the men by letting them have a beer and taking a" early quit". Accordingly, it is the Board's judgment that the penalty of 60 days suspension is excessive, and should be reduced to 20 days.

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

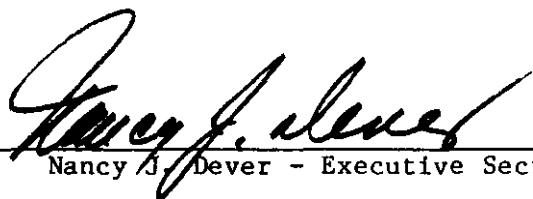
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.

