

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26203
Docket Number MW-26090

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (~~Brotherhood of Maintenance of Way~~ **Way** ~~Employees~~
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) ~~The~~ thirty (30) days of suspension imposed upon Track Laborers J. C. Ante and D. W. Criss for alleged conduct ~~unbecoming~~ an ~~employee~~ was without reasonable cause, unwarranted, on the basis of unproven charges and in violation of the Agreement (System Files C-D-1924/MG-4239 and C-D-1923/MG-42381.

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

OPINION OF BOARD: The Claimants were notified on July 26, 1983, to attend an Investigation on August 5, 1983, to determine facts and place responsibility, if any, in connection with their alleged unbecoming conduct. On May 11, 1983, the Claimants ~~were arrested~~ at Maysville, Kentucky for possession of a controlled substance. On August 2, 1983, a second letter was sent to the Claimants. This letter notified them of the postponement of the Investigation, upon request by the General Chairman, until August 24, 1983. The Investigation ~~was~~ held on this latter date with the Claimants in absentia.

On September 8, 1983, the Claimants were advised that they had ~~been~~ found guilty as charged and they were both assessed a thirty-day suspension. It is unclear ~~from~~ the record on property if the Claimants ever served the thirty-day suspension. They ~~were~~ apparently charged as C&O employees, were ~~on~~ furlough ~~from~~ that Railroad, and as system rail gang employees were apparently working for the B&O side of the Chessie System when the Investigation actually took place and the discipline assessed. This Board has no obligation to rule on questions which are unclear in the record.

The Organization raises a ~~number~~ of procedural objections which must be ruled on by the ~~Board~~. First of ~~all~~, the Organization objects to the Investigation having been held in the absence of the Claimants. The record clearly shows, however, that the Carrier sent Certified letters with ~~respect~~ to both the originally scheduled date of the Investigation and the ~~second date~~ after postponement, to the Claimants with copy to the Organization's Assistant

General Chairman and Chairman. By so doing the Carrier fulfilled the requirements of the Agreement and the Claimants absented themselves from the Investigation at their own risk. This objection by the Organization must be dismissed. Secondly, the Organization contends that the Carrier was in violation of Rule 21 of the Agreement when it failed to charge the Claimants within the time frame specified by that Rule. The Carrier charged the Claimants in July of 1983, for an incident which took place in the preceding month of May. The record shows, however, that the Carrier charged the Claimants as soon as it had information available and this objection by the Organization must be dismissed.

On merit the record indisputably shows that the Claimants were arrested for possession of controlled substances, were convicted and sentenced to sixty-days in jail (fifty-three days suspended) and fined one hundred dollars. Both Claimants were also placed on two years' probation. On merit, the instant Claim cannot be sustained. Numerous Awards in the Railroad industry have precedentially established that discipline is appropriate for certain kinds of off-property behavior by employees (Second Division Awards 8205, 8237; Third Division Awards 21334, 21825, 24728). Such precedent is applicable to the instant case.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1986.