

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26259
Docket Number MW-26245

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

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

(1) The five (5) days of suspension imposed **upon** Laborer G. A. Skelton for alleged 'plea of guilty to charge of second degree forgery on August 11, 1983' was without just and sufficient cause and on the basis of unproven charges (Carrier's File 013.31-292)

(2) The claimant's record shall be cleared of the **charge leveled** against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was advised on October 31, 1983, to attend an Investigation to determine facts and place responsibility, if any, in connection with **his** alleged **plea** of guilty to a charge of second, degree forgery on August 11, 1983, in the **LeFlore** County (Oklahoma) District Court. The Claimant was charged with alleged violation of the following Rules and Regulations of the Carrier's Maintenance of Way Department.

"General Notice - The public **judges** a railroad by the **appearance** and conduct of its **employees**, quality of service, and condition of the property. courteous, considerate treatment of **patrons** is of first importance in retaining and increasing our volume of **business**, and also **governs** the extent of opportunity for employment in **the** railroad's service."

"Rule N - Courteous deportment is required of all employees in their dealings **with** the public, their subordinates and **each** other. **Employees who** are careless of the safety of themselves or **others, who are guilty** of acts of insubordination, incompetency, willful **neglect** of **duty**, **making false reports or statements or concealing facts concerning matters under investigation** will be subject to dismissal."

After the Investigation was held on **November 11, 1983**, the Claimant was advised on December 29, 1983, that **he had been found guilty as charged** and he was assessed a five (5) day **suspension** "...to have been served during time (he was) off before November 14, 1983."

A review of the record shows that the Claimant was sentenced to two (2) years' probation, with requirement for restitution, for second degree forgery by the District Court of LeFlore County, Oklahoma. This sentence was issued on August 11, 1983. On merits the Claimant is guilty of violation of the Rules at bar.

The Organization raises a procedural objection on the grounds that the Carrier was in violation of Rule 13 of the operant Agreement. The Board has studied the record and fails to find sufficient evidence of probative value to sustain such contention. This objection **must**, therefore, be dismissed.

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

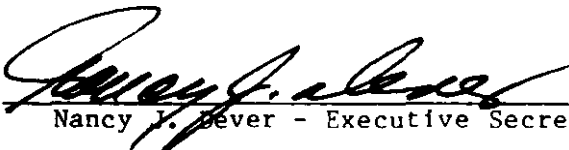
That the Agreement was not **violated**.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.