

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26261
Docket Number Mu-26376

Edward L. Suntrup, Referee

(**Brotherhood of Maintenance of Way Employees**)

PARTIES TO DISPUTE: (

(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 **Trackman W. Higgins** for alleged 'possession of alcohol on **Company property**, at approximately 8:00 P.M., on **March 22, 1984**, in the vicinity of **System Rail Force camp cars at Fulton, in Richmond, Virginia**' was arbitrary, capricious and on the basis of **unproven charges (System File C-D-2292/M+4620)**.

(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 March 23, 1984, to attend an Investigation on April 5, 1984, to determine facts and place responsibility, if any, in connection with his alleged possession and use of alcohol on **Company property** at approximately 8:00 P.M. on **March 22, 1984**, in the **System Camp Cars at Fulton in Richmond, Virginia**. After the Investigation was held as scheduled the Claimant received notice on April 19, 1984, that he had been found guilty of possession of alcohol on **Company property**. He was assessed a **thirty (30) day actual suspension**.

A review of the record shows that a Lieutenant of the Carrier's Police testified that on March 22, 1984, he and another Officer entered a Carrier **Camp Car** located in the **James River Yard (C&O Car 911304)** at 8:00 P.M. and saw "...2 beer cans...sitting on the floor." When the Officers asked an **Equipment Operator** who was in the car who the beer belonged to he told them that it belonged to himself and the Claimant. There is no evidence to establish that the Claimant was actually drinking any **alcoholic beverage on Company property** on the night in question. The testimony by the Lieutenant, with respect to the Claimant's possession of the beer, however, is never credibly rebutted in the record. There is sufficient evidence of probative value present, therefore, to warrant the conclusion that the Claimant was guilty of possession of an alcoholic beverage on **Company property**.

Prior to this incident the Claimant was a four (4) year employee with a clean record and no prior Rule G violations. The Board has ruled on many occasions that the role of discipline should not only be punitive but that it should also provide corrective and training measures for employees (Third Division Awards 5372, 19037). Applying such precedent to the instant case it is the position of the Board that a more reasonable and salutary discipline would have been a fifteen (15) day rather than a thirty (30) day suspension.

We will award that the suspension be reduced to 15 days and Claimant paid for all wages lost as a result of the other 15 days he was off work.

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

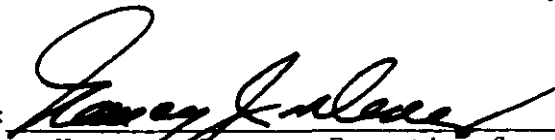
That the discipline was excessive.

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 20th day of March 1987.