

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26363
Docket Number MW-26853

John E. Cloney, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Chesapeake and Ohio Railway Company
(Northern Region - Excluding Hocking Division)

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

(1) The dismissal of **Trackman G. Perras** for alleged 'use and possession of intoxicants during your lunch period . . . August 21, **1984**' was without just and sufficient cause and on the basis of unproven charges (System File C-D 2613/MG-4948).

(2) The claimant shall be reinstated with seniority and all other rights **unimpaired**, the charge leveled **against** him shall be removed from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a Trackman, was notified to attend a Hearing on September 5, 1984, as he was:

"Charged with responsibility for use and possession of intoxicants during your lunch period while subject to duty, at approximately 11:40 a.m., Tuesday, **August** 21, 1984, at **Rougemer** Yard, Dearborn, **Michigan**."

A: the Hearing, conducted by Assistant **Manager** of Engineering **J. L. Melcher**, there was serious conflict in the evidence. **Claimant** and his witnesses denied he had purchased or consumed beer, or had beer in his possession, during the lunch period. On the other hand Carrier's Manager of **Casualty** Prevention and Police, and a Lieutenant of Carrier's Police who had been conducting surveillance because of information received, testified Claimant had an opened quart of beer in a bag in his possession. The Manager testified Claimant drank from the bottle while talking to him. The Lieutenant **testified** "I believe **that** I saw . . ." Claimant consume beer. (Claimant was one of a group of employees)

By letter of September 17, 1985, Claimant was **notified** by letter from Manager-Engineering **Rymer** that:

"...It has been found that you are responsible for use and possession of intoxicants during your lunch period while subject to duty at approximately 11:40 A.M. on Tuesday, August 21, 1984...."

The discipline was dismissal.

The Organization contends Carrier "failed **to present** sufficient credible or convincing evidence to support its **position** in **this** case."

In reviewing a record this Board **must** keep in mind that **it** is not our function to **determine** whether we would resolve factual issues in the same manner as did the Carrier. From **our** review of the transcript of the Investigation we conclude there was substantial evidence to support Carrier's determination.

The Organization also argues the decision was not rendered by the Hearing Officer and accordingly Claimant was denied due process. This had not been raised on the **property**. Accordingly firmly established precedent precludes our **consideration** of this issue.

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

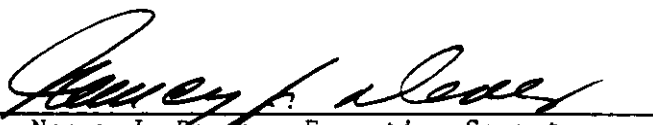
That **the** Agreement was no: **violated**.

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 25th day of June 1987.