

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when, without just and sufficient cause, it entered an S-101 citation into the service record of Foreman N. Jacobs for alleged violation of Rule 3001A (System Docket CR-1112).

(2) Said S-101 citation shall be removed from the claimant's personal record."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant established and holds seniority as a Track Foreman. On March 29, 1984, while assigned to the Retirement Gang at Lima, Ohio, Claimant was issued an S-101 citation for his alleged violation of Rule 3001(a) after he permitted an employee under his jurisdiction to fuel a machine at a pump while the machine was running. The Organization contends that the citation constituted discipline, and as such, Claimant was entitled the benefit of a hearing as provided in Section 1 of Rule 27. The Organization notes that the single exception to the hearing requirement is found in Section 2 of Rule 27, which states:

"Section 2 - Alternative to Hearings

(a) An employee may be disciplined by reprimand or suspension without a hearing, when the involved employee, his union representative and the authorized official of the Company agree, in writing, to the responsibility of the employee and the discipline to be imposed."

In this case, since Claimant was reprimanded without being afforded a hearing and without agreement between the Claimant and the parties pursuant to Section 2 of Rule 27, the Organization submits that the disciplinary measure should not be permitted to stand.

Unfortunately for the Organization, the foregoing procedural objections were never raised during the handling of this case on the property nor was there any reference previously made to an alleged violation of Rule 27. Therefore, the Board will not address those arguments which have not been framed by the parties on the property. See Third Division Awards 21441, 18897, 5469.

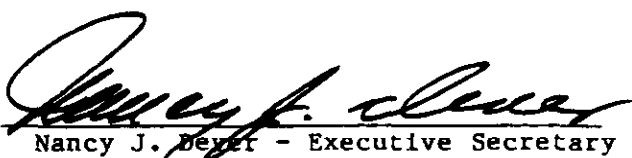
The claim as originally presented was for removal of the S-101 citation from the Claimant's personnel record. Absent substantial evidence in the record which must be present in order for the Organization to meet its burden of proof, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.