

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32409
Docket No. MW-32930
98-3-96-3-301

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [withheld from service on March 16, 1995 and subsequent ten (10) day suspension] imposed upon Mr. R. J. Boyer for alleged ‘. . . subterfuge to avoid performance of your assigned Foreman duties in that you stated to Track Supervisor J. Demeno at Conway Yard on Wednesday, March 15, 1995, that if you had to pick up scrap you were sick and were going home, and subsequently left the property on the basis that you were sick.’ was arbitrary, capricious and on the basis of unproven charges (System Docket MW-3755D).**
- (2) As a consequence of the aforesaid violation, Mr. R. J. Boyer shall receive the remedy prescribed by the parties in Rule 27, Section 4.”**

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 employee 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 were given due notice of hearing thereon.

Only Supervisor Demeno and Claimant were parties to a discussion between them on March 15, 1995 and there is a conflict in their testimony as to what was or was not said. According to Supervisor Demeno, Claimant took offense at being assigned the duty of picking up trash and said that if he had to pick up trash all day, he was sick and wanted to go home.

According to Claimant, he told Supervisor Demeno he had diarrhea and was going on sick leave.

Carrier as trier of fact had to make a credibility determination. Carrier determined Claimant was not a credible witness because his testimony was self-serving and inconsistent, and he asserted he was suffering from one type of illness but brought a doctor's slip for another. In addition, Claimant had a past history of leaving his position.

This Board will not disturb the credibility determinations made by the trier of fact.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of January 1998.