

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36309
Docket No. MW-36503
02-3-00-3-770

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [dismissal subsequently reduced to a thirty (30) day suspension] imposed upon Mr. J. L. Jones on December 6, 1999 for alleged violation of Maintenance of Way Operating Rule 1.6 part 4 in connection with alleged theft of two (2) cans of carburetor cleaner on October 21, 1999 while working as a machine operator on Steel Gang RP21 at Wiggins, Colorado was arbitrary, capricious, on the basis of unproven charges, and in violation of the Agreement (System File S-P-751-H/11-00-0051 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. L. Jones “*** must be made whole for all losses occurring as a result (sic) the Carrier’s violation, and he must have his record expunged of any comment related to this discipline.”

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.

On the morning of October 21, 1999, the Claimant was observed putting items into the trunk of his personal vehicle. When confronted by the Foreman and the

Assistant Foreman, the Claimant initially lied, but then admitted that he had taken two cans of carburetor cleaner to clean his engine. The Claimant was thereafter instructed to return the cans. Initially, the Claimant was dismissed, but that discipline was reduced to a 30 day suspension. The matter of Claimant's 30 day suspension is now before the Board.

The Organization protested the discipline, maintaining that the Carrier had violated Rule 40 of the Agreement when the Carrier did not "properly" review the Hearing transcript. With regard to the merits of the dispute, the General Chairman contended that:

"Mr. Jones was originally dismissed in a 'group' dismissal action of twenty-one employees assigned to System-Region Gang RP-21 for allegations arising while the Gang was working on the Colorado Division. This 'group' dismissal was a blatant Carrier attempt to force the Organization to negotiate new terms and conditions for Week-End Travel Allowance, a failed strategy fabricated by the highest ranking officers of this Carrier."

In that connection, the General Chairman further asserted in his appeal to the Division Superintendent that: "The Organization does not, for a minute, believe that you are capable of rendering a fair, impartial and unbiased decision in the appeal of discipline assessed by the Carrier."

In his denial, Carrier Superintendent contended that he had "done everything in my power to fairly, impartially and without bias consider your appeal of discipline assessed to J. L. Jones. . . ." In light of those statements, the Superintendent labeled the Organization's procedural objections relating to the fairness of the Claimant's Investigation and subsequent discipline "unfounded."

With respect to the merits of the dispute, the Carrier asserted that it ultimately premised its declination on "direct evidence that Claimant took Carrier property and placed it in the trunk of his car for personal use."

At the outset, the Organization asserts that the Claimant's rights were trammelled due to certain procedural errors. However, following careful review of this record we do not concur with that assertion, nor do we find any evidence on this record that the Claimant was denied his contractual right of a fair Investigation at any time throughout these proceedings.

Regarding the merits of this dispute, the record reveals that: On October 21, 1999, while the Claimant was working as a Machine Operator on Region/System Gang RP-21, that Gang's Assistant Foreman, C. Archuleta, observed the Claimant walking away from the work site toward his car, with "railroad property" in his hands.

The Assistant Foreman notified RP-21's Foreman, J. Paz about what he had witnessed. Messrs. Archuleta and Paz questioned the Claimant while he was standing next to his personal vehicle. When the Assistant Foreman asked the Claimant what items he had placed in his car, the Claimant lied, telling Archuleta that it was only his work gloves. When Archuleta repeated the question, the Claimant again lied, denying that he had placed anything in his car. When the Claimant discerned that neither of the Foremen believed his story, the Claimant opened the trunk of his car, produced two cans of carburetor cleaner, and stated that he "didn't need them anyway," but had taken them to clean his car's engine. There is no dispute that the Claimant stated that he did not need the carburetor cleaner for work.

There can be no dispute that the Claimant took two cans of carburetor cleaner with the intention of using same on his personal vehicle. Although the Claimant initially denied taking anything, he ultimately admitted that he had, indeed taken the carburetor cleaner and that his intent was to use the carburetor cleaner on his personal vehicle's engine.

In light of all of the evidence presented, the Carrier's imposition of a 30 day suspension cannot be considered either unduly harsh or otherwise inappropriate.

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 13th day of November 2002.