

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22763
Docket Number MW-22665

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

(1) The suspension of ten (10) days imposed upon Trackmen R. E. Jones and E. D. Ragland for alleged 'disloyalty' was improper, unwarranted and on the basis of unproven and disproven charges [System File C-4(13)-REJ/EDR/12-39(77-15) J/.

(2) The claimants' record shall be cleared of the charge placed against them and reimbursement shall be made for all wage loss suffered."

OPINION OF BOARD: The Claimants were notified of an investigation concerning an assertion that they had violated certain of the Carrier's rules dealing with disloyalty, insubordination, and leaving work early without permission.

Subsequent to the investigation, the Carrier imposed a ten (10) day actual suspension upon each employee based upon its finding that the Employees attempted to take advantage of a situation so as to avoid work and that they demonstrated a degree of disloyalty, even though it was found that specific charges of insubordination and leaving the job without permission were not substantiated.

The Employees insist that the Carrier did not present sufficient evidence to warrant a guilty finding and imposition of discipline, and they request that the claim be sustained. However, the Carrier disagrees, pointing out that the Foreman had specifically advised the two employees that they were to perform work, even though it was raining, and a reference to "going home" was stated more in the nature of an unwelcome alternative, rather than a free option.

We are inclined to agree with the Carrier that the work site is certainly not the appropriate place to conduct a debate, and that when a reference is made to either perform work or "go home", the latter alternative is not understood to be a freely given basis to "take the day off."

Our review of the entire record leads us to conclude that the Employees were well aware of the instruction given to them and that they chose a course of conduct which was not in the best interest of the Carrier.

While the Carrier determined, on the property, that their action was not as severe as the original charge, there is sufficient evidence to support guilt in the lesser degree and the 10 day suspensions cannot be said to be arbitrary or capricious.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

