NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23218
THIRD DIVISION Docket Number CL-23216

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8907) that:

Claim No. 1:

(a) The Carrier violated the agreement when they did unjustly, and discriminately, charge Mr. F. O. Ehrmantraut with responsibility in connection with loss of radio number 014837 during his tour of duty on April 16, 1978 and did then after hearing arbitrarily assess discipline of fifteen (15) days overhead suspension.

(b) As a result of this violation the whole matter should be rescinded and Claimant's record made clear.

Claim No. 2:

(a) The Carrier violated the agreement when they did unjustly, and discriminately, charge Ms. D. Pontoni with responsibility in connection with loss of radio number 014837 during her tours of duty on April 16, 1978 and did then after hearing arbitrarily assess discipline of fifteen (15) days overhead suspension.

(b) As a result of this violation the whole matter should be rescinded, and Claimant's record made clear.

OPINION OF BOARD: Claimants, F. O. Ehrmantraut and D. Pontoni, both regularly assigned as Operator Clerks at Carrier's Lincoln Yard, located at Wixom, Michigan, were each charged in connection with their responsibility regarding the disappearance of a portable radio (identified by number as 014837), during their tours of duty on April 16, 1978 and April 15 and 16, 1978, respectively. Claimants were afforded an investigative hearing on May 11, 1978, and subsequently were adjudged guilty as charged. Accordingly, Claimant Ehrmantraut was given a fifteen (15) day deferred disciplinary suspension and Claimant Pontoni was given both a letter of reprimand for the proven offense occuring on April 15, 1978, and a fifteen (15) day deferred disciplinary suspension for the reoccurrence of the offense on April 16, 1978.

In our review of the record we find Claimants were afforded a fair and impartial hearing and that the discipline imposed by Carrier was neither discriminatory, arbitrary, capricious nor excessive. We further find no showing of proof which would cause us to disturb or reverse the disciplinary action imposed upon the Claimants by the Carrier.

However, we do admit we are a bit bewitched, bothered and bewildered that the instant claim was progressed to our Board since the relief sought in this case was achieved by the passage of time and the application of Rule 27(g) of the Controlling Agreement, effective March 1, 1972. Specifically, the relief sought by the Organization was to have the subject disciplinary actions rescinded thereby clearing the Claimants' records. In our review of the record we became aware that Carrier's highest appeals officer apprised the Organization during the on-property handling of the case that said disciplinary actions entered on the Claimants' records had been cancelled in accordance with Rule 27(g) which reads as follows:

> "A clear record for the first or second six months of a calendar year will cancel one disciplinary entry on service record made prior to the six months of clear record. A clear record for one calendar year will cancel three disciplinary entries on service record made prior to the year of clear record."

It is obvious to us from a simple interpretation of the above-quoted rule that the requested relief sought has already been effected, albeit by Agreement Rule application instead of by Board conferred absolution. We cannot help but recall a parallel case, wherein out of a wellspring of sheer emotion, wrought, we are sure, from a sense of pure frustration, gushed the following superlative pronouncement by the highly renowned Referee, Carroll R. Daugherty, in Award No. 287 of Public Law Board No. 164 in which we quote in its entirety:

> "In these days of individual confusion, national uncertainty, international insecurity and cosmic befuddlement, the Board is impelled here to say the hell with it."

We note these words were penned nearly ten years ago but like many memorable expressions eloquently put, we are hard pressed to improve upon it or in any way modify the sentiment contained therein. We are left then with the inescapable conclusion that the essence of the case before us aptly befits Referee Daugherty's utterance and, furthermore, that the instant issue is mooter than moot and shall therefore be dismissed by us.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim is moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panke
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.