

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24405  
Docket Number MW-24380

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company  
( Southern Region (and Hocking Division)

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

(1) The Carrier, without just and sufficient cause and on the basis of unproven charges, improperly disciplined B&B Mechanic William L. Pegram on charges that:

(a) he allegedly falsified his physical condition on August 11, 1980 (System File C-D-995/MG-2909);

(b) he allegedly operated Crane No. RTC-705 in an unsafe manner on August 15, 1980 (System File C-D-997/MG-2912).

(2) The above charges be stricken from Mr. Pegram's record and that he be reimbursed for all earnings lost in conformity with Rule 21(e)."

OPINION OF BOARD: The Claimant, a B&B mechanic with 11 years service prior to June 23, 1980, secured a leave of absence from the Carrier to undergo a hemorrhoid operation. On August 5 he was released by his physician to return to work on August 6, 1980. On August 13 he was removed from service under the premise it was necessary for the Carrier to determine Claimant's physical condition. Claimant received a letter dated that day from Carrier to attend an investigation stating:

"You are being charged with falsifying your physical condition in order to evade your regular duties on August 11, 1980, at the approach trestle to the Float Bridge, U. S. Navy Operating Base, Norfolk, Virginia, claiming you had been placed on 'light duty' by your attending physician..."

An investigation was held which found, Carrier stated, in its discipline letter, September 12, 1980:

"You were not restricted to light duty work by either the doctor's disability certificates dated August 5 and August 13, nor did you inform anyone of your alleged light duty status until morning of August 11, 1980, after determining day's work activities and then only performed work which was of a light nature."

"Discipline applied is ten (10) days overhead suspension and six (6) month probationary period. Your service record will be marked accordingly."

The claimant was involved in a second incident on August 15, 1980 when he was operating a Crane #RTC-705 in the performance of assigned duties. In the operation of the Crane his supervisor charged that he attempted to strike him with the crane; the Claimant was, at that time, suspended from Carrier's service. He subsequently received a letter dated August 25, 1980 to attend an investigation on September 4, 1980:

"to determine your responsibility, if any, in the unsafe operation of Crane No. RIC-705, endangering the safety of Structure Supervisor R. E. Wright, on August 15, 1980, at approximately 9:00 a.m. on Harbor Road between Pier 9 and Pier 14 at New Port News, Virginia."

The Carrier by letter dated September 17, 1980 stated it had found Claimant at fault in the investigation and assessed discipline "applied in five (5) days actual suspension which we will consider as already having been served during the time you were held off pending investigation of the incident." The letter went on to couple the discipline assessed September 12, 1980, stating "the ten (10) days overhead suspension will have to be served as actual suspension beginning September 24, 1980 through October 3, 1980."

Before discussing the merits we must speak to a contention of the Carrier that joining of the two claims for adjudication is not the same as the claim handled on the property. There is no proper basis for complaint in this respect. The combining of the claims for presentation to this Board did not expand or alter the claims. The Carrier has in no way been misled. The Carrier's contention in this respect is denied and the claims will be disposed on their merits. See recent awards of this Division, 22611 and 22499, involving the same carrier and award 22480, all to the same effect.

In Claim No. 1, there was a charge of falsifying of claimant's physical condition and Carrier found Claimant guilty assessing discipline of ten (10) days overhead suspension and six (6) month probationary period with the Claimant's service record to be marked accordingly. The record accordingly discloses that Carrier sustained its burden of proof on this charge. The discipline assessed was not unwarranted, arbitrary or capricious, therefore it is our determination that the agreement in regard to this claim was not violated.

In Claim No. 2, where Claimant was charged with unsafe operation of a crane endangering his supervisor; found guilty by the Carrier in a letter dated September 17, 1980 and discipline applied of five (5) days actual suspension we find the Carrier failed to sustain its burden of proof and the agreement was violated. The suspension and discipline must be removed from Claimant's record.

The Carrier in its letter of September 17, 1980 was in error since the letter was based on an incorrect assumption that both disciplines were valid and imposed the ten (10) day overhead suspension. Claimant was suspended from service for a total of fifteen (15) days when in fact there was no factual basis for triggering the overhead suspension. The Carrier is thus chargeable for fifteen days of pay at the Claimant's regular rate and his service record corrected to remove evidence of the suspension and we so hold.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 in regard to Claim No. 1, the Agreement was not violated;  
and

That in regard to Claim No. 2, the Agreement was violated.

**A W A R D**

Claim No. 1 is denied.

Claim No. 2 sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

**ATTEST:** Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June, 1983.