

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24887

Docket Number MW-24976

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Consolidated Rail Corporation (former Penn  
( Central Transportation Company)

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

(1) The ten (10) days of suspension imposed upon Trackman R. M. Smoogen for alleged unauthorized absence on May 5, July 17, 18, 24 and 25, 1980 was improper and in violation of the Agreement (System Docket 625).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant R. M. Smoogen was notified to attend a trial to be held on August 13, 1980. He was charged with unauthorized absence in violation of the absenteeism agreement, "second offense, dates May 5th, 1980, July 17th, 18th, 24th and 25th, 1980." The absenteeism agreement reads in pertinent part:

"1. Maintenance of Way Employes absent from work without permission or legitimate cause shall on the first offense be served a written notice advising them that unauthorized absences from work will not be tolerated and could subject them to discipline.

2. Maintenance of Way Employes who are found guilty of unauthorized absence from work on the second offense shall be subject to discipline of up to 10 working days' suspension."

The trial was held as scheduled. Following the trial, claimant received notice dated September 12, 1980 that he had been found guilty as charged and was assessed a ten (10) day suspension from service. After appeal by the Organization on property up to and including the highest Carrier officer designated to hear such appeals this case is now before the National Railroad Adjustment Board.

A review of the record shows substantial evidence present to indicate Carrier violation of the absenteeism agreement. The alleged offense at bar indicates that in trial testimony Mr. Ramp stated in pertinent part that "Mr. Smoogen was issued a warning letter on May 6, 1980" and further in the record that such letter was "entered into the record as evidence." The Board takes note that the May 6th letter is not in the record and in its absence and considering its sequential placement assumes that said letter is a written notice as required in part 1 of the absenteeism agreement for the May 5th absence.

The issue at bar is whether the Claimant can be charged with a violation of the "second offense, dates May 5th, 1980, July 17th, 18th, 24th and 25th, 1980," since he has already been charged with May 5th as a first offense and indeed the controlling Agreement in force does not permit the same offense to be both a warning and incorporated as a part of the basis for a second offense. The Board rules therefore that the Claimant may not be both warned and reprimanded with a ten (10) day suspension for the same offense. As such, the written notice of unauthorized absence should remain a permanent part of the record as his first offense, but the ten (10) day suspension should be recinded and the Claimant should be compensated for all wages lost for the ten (10) days for which he was improperly suspended.

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

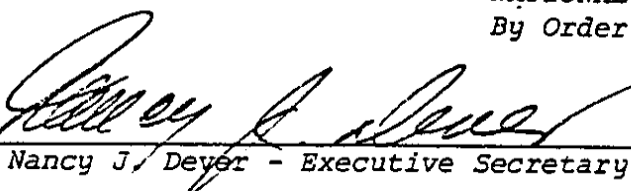
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984