

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25030  
Docket Number MW-25101

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation  
(Former Lehigh Valley Railroad Company)

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

(1) The forty (40) demerits imposed upon Foreman R. J. Casey for alleged violation of Rule 213.135, Paragraphs (b) and (e); the thirty-five (35) demerits imposed upon him for alleged violation of Rule 213.135, Paragraphs (b), (e) and (f) and the thirty-five (35) demerits imposed upon him for alleged violation of Rule 213.233, Paragraph (d) resulting in his dismissal, was excessive and unwarranted (System Dockets 706, 707 and 708).

(2) The demerits mentioned above shall be removed from the claimant's record, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The dispute arose as a result of three incidents that occurred on January 13, 19 and 21, 1981, concerning the Claimant's performance of his duties. Subsequent to three separate investigations to ascertain the facts with respect to these incidents, the Claimant was found guilty of violating the Carrier's rules and assessed demerits which brought his aggregate demerit record to 140. Since his total exceeded 90 demerits, he was dismissed.

The Organization argues on a number of counts and concludes that the evidence of record neither justifies the discipline assessed against the Claimant, nor supports the charges placed against him.

However, after an extensive review of the record before it, the Board finds that the Claimant's performance of his duty was lacking. It is not incumbent upon us to substitute our judgment for that of the Carrier if there is evidence to support the finding of guilt, and this Board finds such evidence herein. Accordingly, absent a finding of arbitrary or capricious action on the part of the Carrier, the claim is denied.

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:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.