

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25544
Docket Number MW-25753

Stanley L. Aiges, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Terminal Railroad Association of St. Louis

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

(1) The five (5) days of suspension imposed upon B&B Mechanic J. Conley for alleged violation of "General Notice and General Rules D and M" was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File 1983-4).

(2) The charges leveled against the claimant shall be removed from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant J. Conley is a Bridge and Building Mechanic headquartered at the Carrier's Brehm Avenue Shop. On March 31, 1983, he was assigned to drive the gang truck. Returning to headquarters at the end of the work day, a car passed the gang truck on the left, pulled in front of it and stopped. Claimant quickly braked to stop. The driver of the car, J. Oakes, got out and approached Claimant. He held out a styrofoam cup and accused Claimant of having thrown it to the street. Claimant protested being stopped for that. (He was, as he put it, "irate".) Oakes and he began to quarrel. Tempers flared. But before any physical incident occurred, Claimant drove away. Oakes followed him to headquarters, where he lodged a complaint about Claimant's littering and their encounter. When asked about the cup, Claimant stated he did not recall having thrown it from his truck. He later stated that he had been told by a co-worker that he had done so, and offered an apology to Oakes.

Following this, the Carrier conducted an investigation. It concluded Claimant was guilty of violating General Rules "D" and "M". It thereupon imposed a five day suspension.

The Board, after reviewing the record, agrees that Claimant's conduct on March 31, 1983 was inappropriate. He, as driver of the gang truck, was responsible for operating it in a safe and proper manner. He had no business throwing trash out the window. His conduct clearly subjected the Carrier to unnecessary criticism. It had just and sufficient cause to discipline him. However, we believe its action was unnecessarily harsh. Under the circumstances, the more reasonable penalty would have been a letter of reprimand.

We direct the Carrier to reimburse Claimant for five days' loss of pay and to reduce the suspension penalty to a letter of reprimand.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.