

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25951
Docket Number MW-26013

John W. Gaines, Referee

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

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

(1) The dismissal of Trackman M. McKinley on the basis of a hearing that was neither fair nor impartial was in violation of the Agreement (System File MG-4144/C-D-1848).

(2) The claimant shall now be accorded the benefits prescribed in Agreement Rule 21."

OPINION OF BOARD: Evidence shows that Claimant, generally acknowledged to be intoxicated, damaged property in Camp Car Kitchen Quarters. Seeming encouraged by the mounting waste, Claimant used a crowbar in pounding on other property in the Kitchen Quarters and in occupied Sleeping Quarters of the Camp Car, which menaced and awakened the occupants. Police entered, and left with no arrest after being persuaded the nighttime outburst was subsiding and could be brought under control internally.

Claimant's guilt and dismissal are supported by the record as being reached fairly and appropriately.

The Organization actively represented Claimant at the Investigative Hearing. Claimant was absent, and argues that a Hearing conducted without him does not meet the procedure required for a fair Hearing.

Claimant stayed away at his own risk, and numerous Awards have upheld discipline imposed on employees after their Hearing was conducted in absentia. Third Division Award 25267.

Under the provisions of Rule 21, Claimant may represent himself or exercise the option of having representation made in his behalf by the Organization. The latter was accorded him throughout the Hearing. An hour in advance of the June 28 Hearing, a private attorney telephoned for a postponement, in order for the attorney, Claimant, and witnesses to attend. The request was denied. Had the same request been submitted with proper basis of support by the duly authorized representative under the Agreement, it too would be procedurally deniable because it was so untimely under the circumstances alleged.

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

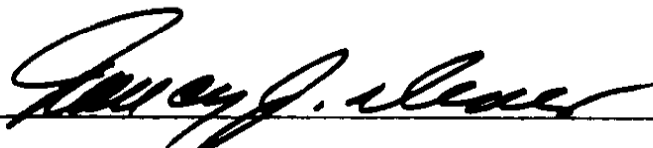
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.