

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26600
Docket Number MW-26139

Gil Vernon, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

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

1. The discipline imposed upon Messrs. J. W. Kelly, M. C. Duran, P. F. Anderson, J. E. Garcia and M. G. Guerrero for alleged violation of 'General Notice, General Rule B and G, General Regulations 700 and 702(B) of Form 7908 "Rules Governing Duties and Department of Employees, Safety Instruction and Use of Radio"' was arbitrary, capricious and on the basis of unproven charges (System File 5-19-11-15-55/013-210-AGGKD)

2. The charges leveled against the claimants shall be removed from their records and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimants were all removed from service on May 27, 1983, due to an incident occurring on that date. An investigation was scheduled for June 10, 1983. Basically, they were charged with violating the following Rules:

"General Notice: Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety. To enter or remain in the service is an assurance of willingness to obey the rules. The service demands the faithful, intelligent and courteous discharge of duty.

General Rule B: Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the railroad for an explanation.

General Rule G: The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on company property is prohibited.

"General Regulation 700: Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations.

General Regulation 702(B): Employees must comply with instruction from proper authority."

Subsequent to the Hearing, the Claimants' were dismissed. However, they were allowed to return to work approximately 97 days later.

After reviewing the record, the Board is thoroughly convinced of the Claimants' guilt and thoroughly convinced that the penalty was not too harsh. Thus, because of the overwhelming nature of the evidence, we cannot find that the due process argument advanced by the Organization is a basis for vacating the discipline. However, we are compelled to point out that if the Carrier holds a joint Hearing in the future, it would be improper to sequester each Claimant. They are entitled to remain present throughout the entire proceeding.

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

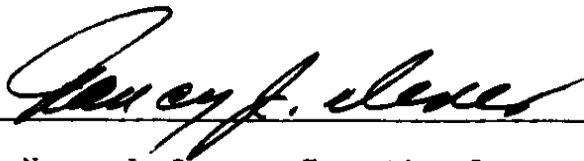
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.