

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

(1) The ten (10) demerits imposed upon Mr. L. Hayhurst for alleged violation of Rule 22 on November 16, 1987 was arbitrary, capricious and an abuse of the Carrier's discretion (System File SAC-2-87/MM-1-88).

(2) The Claimant's record shall be cleared of the charge leveled against him and the ten (10) demerits shall be rescinded."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

After thorough evaluation of the transcript and a consideration of all arguments, we find that the Carrier failed to meet its burden of proof. With respect to the alleged failure of the Claimant to attend strictly to assigned duties, no evidence exists that Claimant's actions were beyond an acceptable standard. Claimant was at the very end of his tour of duty and the conversation evidences no behavior or language at significant variance from a strict attention to his duties.

We have reviewed the conversation of November 16, 1987. The content concerned furloughed maintenance of way employees, the work involved or who should be welding. We find no substantive evidence that the interaction demonstrated "undue conversation" with others. Similarly, this Board finds no evidence of record that the conversation involved an interaction of sufficient duration, or involving emotional or threatening content to convince us that it was excessive, unreasonable or improper. Based on the charge and evidence, we find that the Claimant did not violate Rule 22.

Form 1
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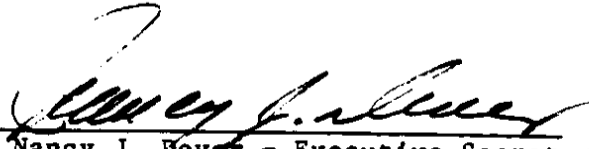
Award No. 28808
Docket No. MW-28640
91-3-88-3-497

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.