

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 18
and	)
	) Award No. 21
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. M. Gevaudan, Carrier Member

Hearing Date: August 31, 2001

STATEMENT OF CLAIM:

1. The discipline (30 demerits) assessed Trackman H. Nunnery resulting from investigations held May 9, 2001, was without just and sufficient cause.
2. As a consequence of the violation referred to in Part (1) above, Claimant's record shall be cleared of the discipline imposed.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 17, 2001, Carrier notified Claimant to report for an investigation on April 25, 2001. The investigation concerned Claimant's alleged violations of Safety Rules 0.7, 1.6, 1.22 and Operating Rule 2.18 in connection with an incident on April 5, 2001, which caused a train delay. The hearing was postponed to and held on May 9, 2001. Subsequent to the investigation, Carrier advised Claimant that he had been found guilty of the charge and assessed thirty demerits.

In Case Nos. 19 & 20, Award No. 20, we denied Claimant's claim for reinstatement to service and upheld his dismissal which resulted from the assessment of forty and sixty demerits for assuming the attitude of sleep, falsifying the daily time report and failing to provide flag

protection for a contractor's crew. Those violations, when combined with the demerits already on Claimant's discipline record, brought his total to 160 demerits. Pursuant to Carrier's policy, an employee who accumulates 100 demerits is dismissed from service.

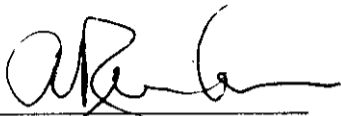
In the instant case, even if we were to sustain the claim and order that the thirty demerits be removed from Claimant's record, Claimant would still have 130 demerits and would remain dismissed from service. Under these circumstances, we find that the instant claim has been rendered moot by our decision in Award No. 20, and must be dismissed.

AWARD

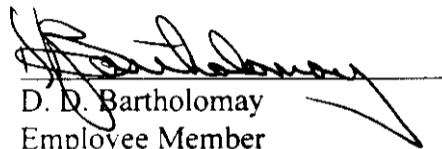
Claim dismissed.



Martin H. Malin, Chairman



A. L. Reichle
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, January 16, 2001.