

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

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

(1) The discipline (10 demerits) imposed upon Crane Operator O. Salaiz for alleged '... responsibility for the collision between truck #524 and payloader #320 at approximately 11:00 a.m., August 18, 1987....' was arbitrary, capricious and in violation of the Agreement (System File SAC-5-87/UM-38-87).

(2) The Claimant's record shall be cleared of the charges leveled against him, the ten (10) demerits imposed upon him shall be removed and he shall be compensated for any wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant, a crane operator, was issued discipline of ten (10) demerits for the charged responsibility for a collision between the payloader he was operating and a truck on August 8, 1987. Before the merits can be addressed, the Board notes the Organization argues the Claimant was not afforded a fair and impartial hearing before an officer other than the officer preferring charges. The Organization contends Rule 57(a) is clear and supports its position. Rule 57(a) states:

"An employee in the service sixty (60) calendar days or more will not be disciplined or dismissed without first being given a fair and impartial hearing before an officer other than the officer preferring charges. If the offense is considered sufficiently serious, the employee

may be suspended pending the hearing and decision. At the hearing the employee covered by this agreement may be assisted by representatives of the Brotherhood, party hereto. The hearing will be held within ten (10) days of date when charged with the offense or within ten (10) days after completion of hearing. Prior to the hearing the employee will be notified in writing of the precise charge against him, after which he will be allowed reasonable time for the purpose of having witnesses and representatives of his own choice present at the hearing."

The Carrier maintains the Hearing Officer was not the Charging Officer claiming Superintendent Doty preferred the charges and requested that an Investigation be held. The record, however, establishes that S. C. Chambers issued the August 21, 1987, notice of charges and clearly identified himself as the Hearing Officer on September 21, 1987. Given these indisputable facts, this Board must sustain the Organization's Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.