

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28909  
Docket No. MW-28984  
91-3-89-3-408

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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 discipline (35 demerits) imposed upon Painter Foreman C. L. Homan for alleged 'negligence in the performance of your duties as Painter Foreman on August 26, 1988, in that approximately twenty (20) vehicles in the Nalco Chemical Company parking lot sustained overspray damage when Bridge 710 was spray painted.' was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File SAC-13-88/TM-24-88).

(2) The Claimant's record shall be cleared of the charges leveled against him, the 35 demerits imposed upon him shall be rescinded and he shall be compensated for all wage loss suffered, if any."

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.

At the time of the incident that gave rise to this case, Claimant was employed by Carrier as a Painter Foreman. On August 26, 1988, he was assigned the job of spray painting the bridge tenders' shanty next to Bridge 710. As a result of the spraying operation, overspray traveled a considerable distance and damaged automobiles in a neighboring company's parking lot. Claims for \$3,112.12 were paid by Carrier for cleaning the damaged cars. On October 11, 1988, Claimant was charged as follows:

"...negligence in the performance of your duties as Painter Foreman on August 26, 1988, in that approximately twenty (20) vehicles in the Nalco Chemical Company parking lot sustained overspray damage when Bridge 710 was spray painted."

A Hearing was held on October 17, 1988. As a result of that Hearing, Claimant was found guilty as charged and assessed a penalty of 35 demerits.

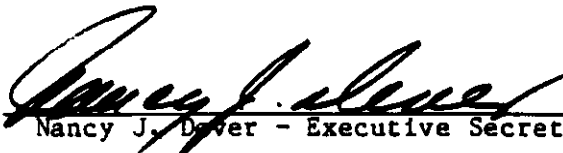
This Board has reviewed the record and has concluded from that review that Claimant was granted a full and fair Hearing and that all rights under the Agreement were afforded him. It has also concluded that Claimant was guilty as charged and that Carrier's action in this case should stand.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.