

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31335  
Docket No. MW-31665  
96-3-93-3-686

The Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Southern Pacific Transportation Company  
( (Eastern Lines)

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

- (1) The discipline [five (5) day suspension] imposed upon Machine Operator P. A. Posas for alleged '... violation of Rules 1001, 1007 and 1011, of the Safety and General Rules...' in connection with his alleged failure to comply with rules and instructions and failure to report for duty at the designated time and place was arbitrary and capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-92-148/MWD 92-27 SPE).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered and properly credited for all benefits in connection therewith.

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 employee within the meaning of the Railway Labor Act as approved June 21, 1934.

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

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

This is a disciplinary dispute involving Claimant's alleged failure to follow instructions and failure to report to work at the designated time and place. The facts reflect that Claimant drove his personal vehicle from home to work at a temporary work location where he was assigned. While on his way to work, Claimant was involved in a traffic accident where he was rear-ended.

The Board finds the Carrier failed to satisfy the burden of proof as required. Therefore, the claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.