

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31337
Docket No. MW-31722
96-3-93-3-753

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
(Elgin, Joliet and Eastern Railway Company

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

- (1) The discipline [thirty (30) demerits] imposed upon Motor Car Repairman J. R. Romero for allegedly failing '... to repair the carriage guide wheel assembly of the No. 197 Spiker.' on June 10, 1992, was unwarranted, arbitrary and excessive, on the basis of unproven charges and in violation of the Agreement (System File SAC-17-92/UM-16-92.)
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charge leveled against him and the discipline assessed in connection therewith shall be rescinded."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 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 of the Adjustment Board has jurisdiction over the dispute involved herein.

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

This claim involves the omission to repair a broken carriage wheel guide of Spiker 197 in a timely manner resulting in a 30 minute-delay of 30 to 35 railroad workers on June 10, 1992. The Carrier contends that Claimant was the only repairman on duty at that time and was repeatedly instructed to make this repair a top priority. Moreover, the Carrier asserts that this is a continuing pattern of behavior as evident in the companion case which occurred on June 9, 1992, in Third Division Award 31338. Thus, the Carrier argues this continuing, wrongful conduct should be taken under consideration in the assessment of the appropriate punishment for Claimant.

The Organization contends that Claimant performed his duties as instructed in this instant claim and in the related claim. However, the Organization maintains, that the two claims involving the same Claimant should be treated separately. Still further, the Organization argues that the Claimant's past record should not be considered in assessing his conduct on this particular disciplinary charge. To do so, the Organization contends, would be a violation of Rule 57(b).

The Board finds that based upon the substantial evidence presented, the Carrier has met its burden of proof. In addition, the Board concludes that the application of Rule 57(b) was correctly applied in determining the quantum of discipline which should be properly assessed. In sum, the Board further finds that Rule 57(b) was not violated by Carrier.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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