

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31338
Docket No. MW-31725
96-3-93-3-54

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 Employees
(Elgin, Joliet and Eastern Railway Company

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

- (1) The discipline [fifteen (15) demerits] imposed upon Motor Car Repairman J. R. Romero for allegedly failing '... to repair the gun of the No.197 Spiker prior to the completion of your tour of duty.' on June 9, 1992, was unwarranted, arbitrary and excessive, on the basis of unproven charges and in violation of the Agreement (System File SAC-16-92/UM-15-92).
- (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record shall be cleared of the charge leveled against him and the discipline assessed in connection therewith shall be rescinded."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 Claimant's alleged negligent omission to repair the gun of the No.197 Spiker on June 9, 1992, prior to completion of his tour of duty as instructed. It is the Carrier's position that the companion dispute, which resulted in Third Division Award 31337, which was filed the next day, should be considered in assessing the appropriate sanction for the Claimant. Still further, the Carrier maintains that the Organization is prohibited from bringing forth any new arguments, not presented at the hearing and subject to cross-examination. Thus, the Carrier asserts that the Carrier's alleged violation of Rule 57(b) cannot now be raised.

The Organization counters that the consideration of the companion case in assessing the Claimant's discipline for this claim constitutes a violation of Rule 57(b).

The Board finds that the Carrier has met its burden of proof with a preponderance of evidence. The misconduct of Claimant, the omission to repair, was seemingly cumulative and thus can rightly be considered in making a determination as to the appropriate quantum of discipline.

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.