

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No.31548  
Docket No. MW-32103  
96-3-94-3-512**

**The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.**

**(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(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 Mr. W. E. Shropshire for violation of Rule 33, in connection with the charge of '...while operating your assigned vehicle at approximately 4 p.m. on May 24, 1993 you sustained an injury while not wearing your seat belt.' was unwarranted, without just and sufficient cause and in violation of the Agreement (System File SAC-17-93/MM-5-93).**
- (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record shall be cleared of the charge leveled against him and the discipline assessed in connection therewith shall be rescinded."**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.

The incident leading to this dispute occurred on May 24, 1993 when the Claimant, while operating a Carrier truck, hit his head against the truck cab roof, causing an injury to his neck. The Carrier found the Claimant guilty of the charge that he sustained an injury "while not wearing a seat belt."

The Board notes that both parties have advanced matters in their Submissions to the Board that were not joined on the property. Accordingly, pursuant to well-established principles in this industry, these matters were not considered by the Board.

The evidence shows that the Claimant was not wearing his seat belt. The Claimant defends his action by claiming that the belts in the truck that he drove were missing a buckle or clasp and that the belts were attached to the floor of the truck, rather than the air-ride seat.

However, the Carrier's Manager of Operations testified that he inspected the truck shortly after the incident and found that it was equipped with an operative seat belt.

The Organization, during the investigative hearing, requested that the truck be jointly inspected at that time. The Carrier refused the request. However, the Hearing Officer stated that, before any decision would be made, he would personally inspect the truck used by the Claimant. The Organization did not offer any further objection at that time. In the Carrier's letter of January 5, 1994, it was affirmed that the Hearing Officer inspected the truck and found an operable seat belt. However, the Organization contends that the Hearing Officer's action to inspect the truck runs counter to Rule 57(b) which states:

**"A transcript of all evidence given at the hearing will be furnished the employee or his representative, upon written request. No evidence or statement made will be used in considering the discipline administered except such as may be introduced at the hearing and subject to cross-examination."**

We hold for the Organization on this issue because it did not have an opportunity

to examine the evidence, whatever it was, that the Hearing Officer used when reaching his decision. The Board is compelled to observe that the Claimant and the Organization throughout the hearing raised what appeared to be very reasonable questions with respect to the configuration of the seat belts and the alleged missing parts. These all could have been easily resolved by a joint inspection of the truck, which in the long run would have saved everyone considerable time and effort. The Board notes the numerous letters exchanged between the parties during the appeal process and the submission of the case to this Board and that, had an agreement in this simple question been made earlier, this case would not have turned on that issue.

**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 July 1996.**