

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24456  
Docket Number MW-24538

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company

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

(1) The thirty (30) demerits imposed upon Truck Driver R. E. Cronin for alleged responsibility for an accident on August 26, 1980 and his dismissal for 'an accumulation in excess of ninety (90) demerits' was without just and sufficient cause and on the basis of unproven charges (System File 6-22-11-14-55/013-210-C).

(2) The thirty (30) demerits shall be expunged from the claimant's record, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: By letter dated September 8, 1980 Claimant, truck driver R. E. Cronin was notified that he had been assessed thirty (30) demerits against his personal record. He was accused of allegedly striking a private vehicle owned by a carman with trailer of Carrier semi MW 25401 which Claimant had allegedly been driving between 4:00 and 5:30 PM on August 26, 1980; in addition Claimant was accused of not having reported this accident. Since the demerit assessment related to this incident put Claimant's personal record in excess of ninety (90) demerits he forfeited right to waive investigative hearing which was scheduled for September 24, 1980. After the hearing Claimant was advised by letter dated October 11, 1980 that he had been found guilty as charged and because of demerit accumulation was dismissed from service in accordance with current Agreement Rule 48.

A review of the record shows that after the carman reported the damage to his personal vehicle, which damage was sustained between approximately the hours of 3:00 and 6:00 PM on August 26, 1980 while it was parked along the main road to the Car Repair Facility of Carrier's Green River, Wyoming Yards a subsequent investigation by Carrier Special Agent established evidence linking the low-boy trailer and truck Claimant had driven that afternoon to the carman's damaged vehicle. Evidence included paint matchings on both vehicles and part of a red plastic safety reflector from the carman's vehicle which was found lodged in the low-boy trailer STR-86 which was pulled by the Mack tractor which Claimant had been operating on the day in question. To state that the carman might have backed his vehicle into the low-boy trailer is a line of reasoning which merely reinforces the circumstantial evidence which points to the two vehicles having collided by conjecturing that the carman had been the active rather than the passive agent; nothing in the record supports this line of reasoning. Further, to state that

Claimant was oblivious of having damaged the carman's vehicle, which sustained over \$500.00 in needed repairs, appears less than credulous to the Board. Should this have been true, however, it would only absolve the Claimant of not having reported the accident; it does not absolve him of carelessness for having perpetrated the incident in the first place. The assessment of the thirty (30) demerits by the Carrier, given the circumstances of the instant case, is neither unreasonable, capricious, nor arbitrary and such assessment of discipline will not be disturbed by the Board. There is no need for the Board to discuss procedural issues raised in this case since the claim is denied, by the Board, on merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

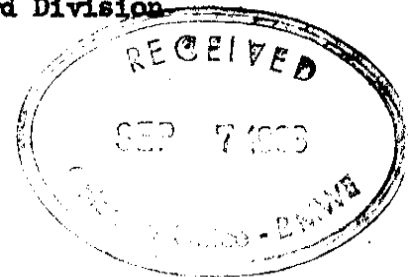
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 29th day of June 1983.