

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28602
Docket No. MW-28790
90-3-89-3-184

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles 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 ten (10) demerit marks assessed to Mr. O. Salaiz because he was allegedly '... negligent in the performance of your duties while working as a Crane Operator on January 20, 1988 resulting in damage to a hydraulic jack near K-12 in the Steel Car Shop ...' was arbitrary, capricious and in violation of the Agreement (System File (DJ-8-88/UM-21-88)).

(2) The ten (10) demerit marks assessed to Mr. Salaiz shall be rescinded and he shall be reinstated as a crane operator with all seniority rights unimpaired."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant was notified of a Hearing on an allegation that he was negligent when he damaged a hydraulic jack. Subsequent to the Hearing, the Claimant was assessed ten (10) demerits and was disqualified as a Crane Operator.

At the Hearing, the Claimant admitted that while operating the pay-loader in reverse, the equipment was rocked into the hydraulic jack, striking the electrical box on said jack. The Claimant conceded that the ground was not level and he knew that the payload "articulates" when there is too much weight on the front end. Even though he was aware that the wheels on the back of the machine lift up, he backed up, on uneven ground, with a "huge bucket of concrete."

At the Hearing, in the appeals process, and before this Board the Organization asserted that the charges were not precise because they alleged damage to a hydraulic jack, whereas the evidence showed damage to an electrical box. But the evidence adduced at the Hearing clearly showed that the electrical box was attached to, and can be considered part of, the hydraulic jack. The Claimant was well aware of the damage involved since he brought it to the Carrier's attention and clearly was not misled by the written charges.

The Organization suggests that these charges are merely part of a continuing effort to discredit the Claimant in retaliation for some prior activity. The record contains only that accusation but it is not supported by probative evidence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.