

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Elgin, Joliet and Eastern Railway Company

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

(1) The discipline (30 demerits) imposed upon Painter Foreman C. L. Homan for alleged '... responsibility for the collision between EJ&E Truck 473 and a 1976 Ford Truck ... at approximately 3:00 p.m., September 24, 1987.' was arbitrary, capricious and in violation of the Agreement (System File SAC-6-87/TM-3-87).

(2) The Claimant's record shall be cleared of the charges leveled against him, the 30 demerits imposed upon him shall be rescinded and he shall be compensated for all wage loss suffered, if any."

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 employees 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 is employed by Carrier as a Painter Foreman in the Bridge and Building Subdepartment. On September 24, 1987, while driving a Carrier truck on company property, Claimant struck a pickup truck owned by another Carrier employee. The incident was reported by Claimant to his Supervisor. As a result of the incident, Claimant was notified to appear at an investigation into the matter. The Hearing was held as scheduled.

On October 16, 1987, as a result of that Hearing, Claimant was found guilty and assessed a 30-demerit penalty. The case was appealed and has been placed before this Board for resolution. The Organization in this instance has ultimately based its defense on a procedural violation, alleging that Rule 57(a) of the Agreement was not followed: Rule 57(a) reads, in pertinent part, as follows:

"Rule 57 (a) An employe in the service sixty (60) calendar days or more will not be disciplined or dismissed without first being given a fair and impartial hearing before an officer other than the officer preferring charges."

The Organization has stated that the same Carrier official issued the charges, acted as Hearing Officer, found Claimant guilty, and assessed a 30-demerit penalty. This "one-man show", the Organization argues, is in violation of the Agreement and the discipline assessed should be set aside.

This Board has, on many occasions, stressed the point that Carrier has the responsibility of affording Claimants all rights guaranteed by Agreement and of making sure that disciplinary proceedings are not weighted against the employee being investigated.

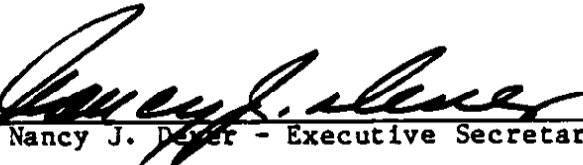
A review of the record before the Board does not persuade us that Carrier has met that obligation in this instance. The Agreement clearly states that an Officer other than the one preferring charges should hold the Hearing. In this case, that was not done. On top of this, the same Officer found Claimant guilty and assessed a penalty. The Board concludes that the procedures followed by Carrier in this instance were sufficiently violative of the requirements of Rule 57 as to require a sustaining award. Claimant's record shall be cleared of the charges against him, as well as the 30 demerits he was assessed.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.