

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

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

(1) The dismissal of Truck Driver N. Demonte for alleged involvement in an auto accident with Company Truck #8276 on September 15, 1989 was arbitrary, capricious and on the basis of unproven charges (System File C #44-89/800-16-B-83 CMP).

(2) The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired and he shall receive pay for all time and benefits lost."

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 involved in an automobile accident while operating a Company truck. He was cited for an Investigation on a charge that he had failed to exercise care in the operation of the vehicle. Following the Investigation Claimant was dismissed. He had been involved in several other instances where vehicles under his control were damaged.

We have examined the transcript of the Investigation and conclude that adequate evidence was developed to establish that Claimant was guilty of a failure to exercise appropriate care in the operation of the truck. Accordingly, discipline was warranted. However, we do not believe that the circumstances of the incident, or Claimant's past disciplinary record warrant dismissal. It is therefore ordered that the dismissal be converted to a suspension equal to the time Claimant has been out of service. Carrier shall promptly effect Claimant's return, in accordance with its usual procedures, with seniority and all other rights and benefits unimpaired, but without compensation for time out of service.

Form 1
Page 2

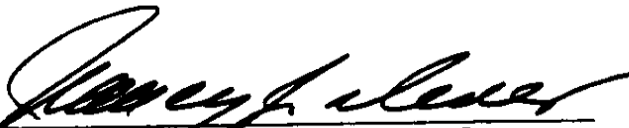
Award No. 29123
Docket No. MW-29495
92-3-90-3-428

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.