Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30223
Docket No. MW-29638
94-3-90-3-634

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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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 of fifteen (15) demerits imposed upon Truck Driver J. R. Phelps for alleged violation of Safety Rules 16 and 17 and Driving Rule 13(a) and (b) was arbitrary, capricious, and on the basis of unproven charges and in violation of the Agreement (System File MM-26-89/142-361).

(2) The Claimant shall have the discipline imposed upon him rescinded and he shall have the charges leveled against him cleared from his record."

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 employe 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 Claimant was subject to an Investigative Hearing under the following charge:

> "At approximately 1:20 A.M., July 30, 1989, during your 11:00 P.M. 46" assignment you allegedly failed to properly perform the duties of your assignment in a safe manner, and allegedly failed to drive defensively while operating near the south end of RT#2 in the vicinity of the Coke plant in that you knowingly engaged in an unsafe practice by failing to exercise good judgment, when your assigned vehicle incurred damage by coming into contact with a concrete structure at that location."

Following the Hearing, the Carrier found the Claimant guilty of the charge and assessed him discipline of 15 demerits.

Despite the Organization's assertion to the contrary, the Board finds the charge was precisely worded and enabled the Claimant to make a full defense.

The Hearing record shows a substantial conflict as to the circumstances in which the Claimant's vehicle was damaged. His testimony that he was forced to leave the roadway because of an oncoming vehicle was disputed by the second-hand report of a supposed witness. The Carrier, however, did not attempt to bring this individual to the Hearing, with the Assistant Trainmaster stating, "I personally didn't feel that his testimony was necessary."

The principal basis of the charge appeared to be that the Claimant was driving "too fast." There was, however, no evidence to refute the Claimant's contention that he was driving within the 20-mile-an-hour speed limit at that location.

While hearsay evidence and/or written statements can be acceptable to a limited degree, based on the circumstances, in this instance the Carrier had no other independent information for its disciplinary action. On this basis, the Board finds the discipline without sufficient foundation. Damage to the Claimant's vehicle did occur, but this alone is not proof of Rule violation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.