

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30489
Docket No. CL-30783
94-3-92-3-691

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

(Transportation Communications International Union)
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

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

1. Carrier violated the effective agreement when, following an investigation held on November 21, 1991, it imposed discipline on Mr. C. J. Payne in the form of ten (10) demerits against his record without just cause;
2. Carrier shall now rescind the discipline imposed, shall clear Claimant's record of the charges placed against him and shall compensate him for the time spent in the investigation."

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 employee 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 basic facts leading to this case are not in dispute. On October 22, 1991, Claimant held the position of Yard I Clerk and was assigned as a Yard Checker. His duties included obtaining initials and numbers for various tracks within the confines of the US Steel, Gary Works, Plant. He was also responsible for obtaining disposition of those cars. At or about 7:00 A.M. of the day before, a yard check, made of Track 137H had shown car EJE 6061 as outbound. When Claimant made a check of Track 1-H on October 22, he listed the car as "outbound" as well. The car ultimately arrived in Carrier's Kirk yard. Sometime after its arrival a Carrier officer discovered that it had been moved from the Gary Mill in error.

On November 4, 1991, Claimant was charged as follows:

"....you allegedly failed to properly perform your duties on position Roust 21 at 15:00 hours on October 22, 1991, when you submitted an inaccurate yard check of Track 1H in that you showed dimensional load, EJE 6061, as an outbound load of plate at 1930 hours."

Following an Investigation held on November 21, 1991, Claimant was assessed ten demerits. The Organization filed a claim on Claimant's behalf and it was subsequently processed in the usual manner. A Conference on the matter was held on March 13, 1992, after which it remained unresolved.

The record in this case indicates that Claimant was simply the last actor in a chain of mislablings of the car in question. The car was initially erroneously designated as outbound by the customer (US Steel), and was subsequently "confirmed" in its outbound status by a Yardmaster and by the employee who made the October 21, 1991, yard check. Claimant listed the car as outbound, even though it was not on his particular roster, based upon the "history" of the car included in his documentation, and the fact that EJE 6061 was on a track normally designated as "outbound only" when Claimant encountered it. It is also unrefuted on the record that none of the other employees involved was disciplined in connection with this incident. In light of the foregoing, the Board does not find that Carrier has sustained its burden of proving Claimant guilty of the charges.

With respect to the Organization's request for compensation of Claimant for time spent at the Investigation, it has failed to provide evidence of any Rule or practice between the Parties that would allow for such a remedy. Accordingly, the Claim is sustained only with respect to removal of the discipline assessed, and clearing any record of the charge from Claimant's personnel file. (See Third Division Awards 25057, 21310, and 22844.)

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.