

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30667
Docket No. MW-30945
95-3-92-3-830

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 Employees
(
(Burlington Northern Railroad (former Colorado
(and Southern Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [letter of censure, five (5) day suspension and two (2) years restriction from driving any Carrier vehicle] imposed against Assistant Foreman J. A. Romero for his alleged violation of Rules 1, 338 and 567 of the Safety Rules and General Rules on August 2, 1991 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-91-12/7MWD 91-12-27A CSR).
- (2) Claimant, Romero shall receive the benefit of the remedy prescribed by the parties in Rule 26(c)."

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.

On August 2, 1991, Claimant was involved in an incident which caused \$600.00 damage to a Carrier vehicle. Following an Investigation on this incident Claimant was disciplined with a five day suspension and prohibited from driving any Company vehicle for two years. The Board reviewed the transcript of the Investigation and finds that Claimant was responsible for the incident. Accordingly some discipline was warranted.

However the Board is concerned that the discipline assessed was excessive. In the circumstances involved a five days suspension would be appropriate, but imposing an additional two year driving restriction is not. Such a restriction could preclude Claimant from working at a time when the only job available would be one that required him to operate a Company vehicle, thus extending the suspension for an inordinate period of time for a relatively minor matter.

Accordingly, the Board will direct that the driving suspension be removed and that if Claimant was unable to work during the two year period of its existence, solely because of the driving restriction, that he be made whole for any losses incurred as a result. In all other respects the Claim is denied.

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 31st day of January 1995.