

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31339  
Docket No. MW-31743  
96-3-94-3-8

The Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

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

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

- (1) The discipline (10 demerits) imposed upon Motor Car Repairman V. M. Arocho and Crane Operator J. C. Cheney for alleged negligence in the performance of their duties which resulted in engine damage to Burro Crane 230 on June 30, 1992 was on the basis of unproven charges and in violation of the Agreement (System File SAC-19-92/UM-17-92).
- (2) The discipline (10 demerits and disqualification), imposed upon Crane Operator J. C. Chaney for alleged negligence in the performance of his duties as a Crane Operator when Payloader 322 struck and damaged a overhead door at the Truck Garage, East Joliet, Illinois at approximately 12:40 p.m. on August 5, 1992, was capricious, disproportionate and excessive (System File SAC-21-92/UM-18-92).
- (3) As a consequence of the violation referred to in Part (1) above, the Claimants' records shall be cleared of the charges leveled against them and the discipline assessed in connection therewith shall be rescinded.
- (4) As a consequence of the violation referred to in Part (2) above, the Claimant's disqualification shall be rescinded and he shall be compensated for all wage loss suffered as a result thereof."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the 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.

This is a two-part claim. Part I involves the allegedly negligent, collective conduct of both Claimants resulting in engine damage to the Burro Crane 230 on June 30, 1992. Part II involves only the Crane Operator, J. C. Chaney, who allegedly negligently struck and damaged an overhead door at the Truck Garage on August 5, 1992, with the Payloader 22.

The Organization contends that the Burro Crane had a defective throttle causing the engine to overheat, known to the Carrier from its purchase, and has a history of overheating. Thus, the Organization argues, the resulting engine damage was not the fault of either Claimant. It is also the contention of the Organization that Rule 57(b), the consideration of one's prior record in making an assessment of discipline upon these related charges, was violated by the Carrier. Hence, the Organization asserts, that the discipline as to each Claimant should be set aside.

On the other hand, it is the contention of the Carrier to the first charge, that the evidence is direct as well as circumstantial and fairly assessed. As to the second charge, the Carrier asserts that the Claimant admitted the charge. Lastly, the Carrier argues in response to the validity and application of Rule 57 (b), that Claimant's past record can be considered as a factor when making a final determination of a serious offense.

The Board finds that the Carrier has met its burden of proof as required with substantive, persuasive evidence. The Board further finds that a Claimant's past record may be considered when determining the quantum of discipline such as here, where disqualification results. Thus, the Board cannot conclude that the Carrier violated Rule 57(b) as the Organization urges. Therefore, this claim is denied in its entirety.

Form 1  
Page 3

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AWARD

Claims denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.