

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35606
Docket No. MW-35265
01-3-99-3-113

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (time held out of service from August 20, 1997 through and including September 1, 1997) assessed Machine Operator J. A. Bellefeuille, Jr. for ‘Your violation of the Conrail NORAC Operating Rules 801, 807(c), and 80, Sixth Edition, effective January 1, 1997, and your violation of Conrail Safety Rules and Procedures, Engineering, effective May 1, 1995, Rule 63.3, No. 6, and 63.3, No. 11, whereas on August 19, 1997, at approximately 10:00 A.M., at CP 482, while operating Track Car ME5056 you collided with Track Car MP0911 which caused extensive damage to Track Car MP0911.’ was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System Docket MW-4989-D).
- (2) As a consequence of the violations referred to in Part (1) above, Machine Operator J. A. Bellefeuille, Jr. shall now ‘. . . be exonerated of all charges and be compensated for all wages, including holiday pay, plus all credits and benefits denied to this unjustified decision.’”

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 were given due notice of hearing thereon.

When the Submissions regarding this disciplinary dispute are examined, it is seen that no transcript of the Investigation Hearing held August 28, 1997 was included. The lack of a transcript presents us with an evidentiary void in support of the Carrier's action. Given that the Carrier solely bears the burden of proof to establish the propriety of its disciplinary decision, the absence of a transcript leaves us no choice but to find that the Carrier's burden has not been satisfied. We are compelled to sustain the claim. See Third Division Awards 23015, 27160 and 28671.

AWARD

Claim sustained.

ORDER

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 24th day of July, 2001.