

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 3633  
Docket Number 3605

Referee Dana E. Eischen

PARTIES        The American Railway Supervisors Association  
                 TO  
DISPUTE:       Consolidated Rail Corporation

STATEMENT     It is the Claim and request of the Petitioning Organization that:  
OF CLAIM:

1. Discipline assessed Mr. D. N. Dantos, Foreman, Altoona Shop, as a result of a Hearing held on May 25, 1977, was unwarranted, unjust and in abuse of Carrier's discretion.
2. That because of such violative action, Carrier be required to rescind the discipline and that Mr. Dantos' record be cleared.

OPINION        Claimant is a Foreman of a third trick painting crew (12 midnight  
OF BOARD:     to 7:00 am) at Altoona Yard. Following investigation on May 25,  
                 1977 he was assessed discipline of a 30-day suspension on charges  
                 as follows:

"Failure to properly supervise employees on  
third trick on Wednesday, 4-20-77, allowing  
painter to paint over loose material and dirt  
on locomotive 3239."

That discipline was reduced to a reprimand on appeal.

Evidence adduced at the hearing shows that Locomotive No. 3239 was painted improperly and carelessly sometime between the hours of 11:00 pm and 11:45 am on April 21, 1977. Absent supposition and speculation however, we do not find the record persuasive that Claimant was responsible for the careless work or that he did not supervise his crew properly. The main evidence upon which Carrier preferred and sought to sustain its charge was the statement of the second shift Foreman that he did not paint No. 3239 and that he "presumed" that the third trick crew had done it. Time cards and work logs which might have pinpointed the critical facts regarding the time and the employees who painted Locomotive No. 3239 not only were not produced by Carrier but were flatly refused when Claimant requested same prior to the hearing. Conjecture, supposition and inference piled upon inference are not sufficient to carry the burden of proof required of Carrier in discipline cases. The written reprimand cannot stand and must be stricken from Claimant's record.

## FINDINGS:

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

The carrier and the 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.

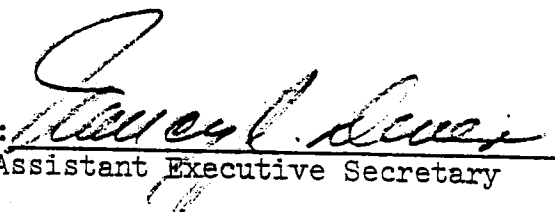
The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: Executive Secretary  
National Railroad Adjustment Board

By:   
Assistant Executive Secretary

Dated at Chicago, Illinois, this 6th day of February 1979